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RACISM, RACIAL DISCRIMINATION, XENOPHOBIA AND ALL FORMS OF DISCRIMINATION

Report by Mr. Maurice Glèlè-Ahanhanzo, Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, submitted pursuant to Commission on Human Rights resolution 2001/5

Addendum

Mission to Australia*

Summary

* The summary of this mission report is issued in all official languages. The report itself, the original of which is in English and French, is issued in English only; it is annexed to this summary.

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Summary

At the invitation of the Australian Government and pursuant to Commission on Human Rights resolution 2000/14 (III) of 17 April 2000, the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance undertook a mission to Australia from 22 April to 10 May 2001. The purpose of this mission was to enable the Special Rapporteur to evaluate the impact, on the various components of the Australian population, of legislation and governmental policy in the area of action to combat racism, racial discrimination and xenophobia. Particular stress was laid on the situation of the Aboriginal peoples and the Torres Strait Islanders, especially in the light of the information reaching the Special Rapporteur concerning the discriminatory character of the Native Title Amendment Act 1998. Other information related to the difficulties in the process of reconciliation between Indigenous and non-Indigenous inhabitants, and the discriminatory nature of the laws on mandatory sentencing enforced in Western Australia and the Northern Territory, which had led to an excessive percentage of young Aboriginals among the prison population. The Special Rapporteur also wished to examine in situ the policy of multiculturalism underlying Australia's immigration policy and the social cohesion of the country.

At the end of his visit, the Special Rapporteur noted that substantial efforts had been made by the Australian Government to end racism and racial discrimination. A number of institutions - anti-discrimination commissions or human rights and equal opportunity commissions - have been established at the federal level and in the federated states to combat these phenomena. Programmes aimed at improving the living conditions of the Indigenous peoples exist, even if they have not yet succeeded in producing the desired results. Recognition of ethnic diversity and the promotion of inter-ethnic harmony undoubtedly constitute an ideal policy for consolidating the Australian nation, provided it does not waver under the influence of electoral considerations.

In addition, the question of reconciliation with the Aboriginal peoples remains outstanding, because it affects the foundations of the Australian State and conflicting cultural values. For the Aboriginals, despite the democratic foundations of the Australian State and its desire to incorporate all its ethnic components on an egalitarian basis, this State is a manifestation of colonization, whose consequences remain to this day, notably through the limitation of their land rights, the tragedy of the abducted children, cultural clashes and highly precarious living conditions outside the wealth of the majority of Australians. In their view, the resolution of conflicts is dependent on negotiation on equal terms between Australia's governors and those who originally possessed the continent, the eminent owners of the Australian lands, of which they have been dispossessed, particular account being taken of their indissoluble links with the land. The land question remains crucial and is the key to the Australian problem. The Commonwealth Government and the dominant political forces mainly take a forward-looking approach which, while envisaging the possibilities of remedying the consequences of past actions, wishes to reduce their effects on the building of a new nation. There is undoubtedly a medium-term character in the positions displayed by the various protagonists, and the Australian people has on many occasion succeeded in finding the catalysts for dialogue in order to restore confidence and ensure peaceful coexistence.

The Special Rapporteur has therefore made the following recommendations in a humble attempt to pave the way for a coming-together of the various protagonists:

1. The policy of multiculturalism should be widely discussed and defined by a broad consensus. In order to reduce if not eliminate the superiority and inferiority complexes which underlie relations between the Aboriginals and the mainly English-speaking heirs of European culture, the policy should be based on recognition of the right to difference and to cultural identity, with broad communication between one culture and another. Inspiration should be drawn from UNESCO's declarations and programmes on cultural identity, cultural diversity and multiculturalism; thus, through education, there will be a breakthrough in the present situation, in which the various communities and peoples lead parallel lives while continuing to ignore one another. The Special Rapporteur therefore recommends that the Australian Government should review its policy of multiculturalism, in order to turn it into a channel for the dynamic and harmonious transformation of national society, through education at all levels;

2. The process of reconciliation should be given fresh impetus, taking greater account of the positions of the representatives of the Indigenous peoples;

3. The Native Title Act should be amended in the light of the proposals already made by the Aboriginals in order to enable them to extricate themselves from the extreme poverty afflicting them in their daily lives;

4. Since sport, and Australian football in particular, are activities which bring the various components of the Australian population together, and are a potential vehicle for tolerance and respect between individuals, the Special Rapporteur recommends that the Australian Football Association should initiate a broad campaign against racism and racial discrimination aimed at spectators. This campaign might be modelled on the "Lets kick racism out of football" campaign initiated in the United Kingdom in 1993 by the Commission for Racial Equality and the Professional Footballers' Association;

5. Subsidies should be made available to the Alice Springs Aboriginal Development Institute so that the university can be built;

6. The state and territory legislation on the recognition of qualifications should be uniform, and diplomas issued by more overseas universities should be recognized;

7. Australia should accede to the Convention on the Elimination of All Forms of Discrimination against Women;

8. The government of the State of Queensland should accelerate compensation procedures for Aboriginals and Torres Strait Islanders whose wages have been withheld since 1897, through the implementation of the measures for the protection of these peoples;

9. The Australian Government is urgently requested to find a humane solution to the question of the "stolen generation", whose situation is psychologically and socially blocked and desperate;

10. Lastly, the Special Rapporteur would like to recommend to the Australian authorities that they continue, improve and intensify the efforts already being made to combat racism and racial discrimination against the Aboriginal peoples, in particular by attacking their extreme poverty.

Annex

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Introduction

A. Purpose of the mission

1. At the invitation of the Australian Government and pursuant to Commission on Human Rights resolution 2000/14 (III) of 17 April 2000, the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance undertook a mission to Australia from 22 April to 10 May 2001. The purpose of this mission was to enable the Special Rapporteur to evaluate the impact, on the various components of the Australian population, of legislation and governmental policy in the area of action to combat racism, racial discrimination and xenophobia. Particular stress was laid on the situation of the Aboriginal peoples and the Torres Strait Islanders. In this connection, it should be recalled that information reaching the Special Rapporteur referred to the discriminatory character of the Native Title Amendment Act 1998. Other information related to the difficulties in the process of reconciliation between Indigenous and non-Indigenous inhabitants, and the discriminatory nature of the laws on mandatory sentencing enforced in Western Australia and the Northern Territory, which had led to an excessive percentage of Aboriginals among the prison population. The Committee on the Elimination of Racial Discrimination, in the context of its consideration of the periodic reports of Australia and its early warning procedure had also drawn the attention of the Australian Government to the incompatibility of the above-mentioned Australian legislation with Australia's obligations under the International Convention on the Elimination of All Forms of Racial Discrimination, to which it is a party. The Special Rapporteur also wished to examine in situ the policy of multiculturalism underlying Australia's immigration policy and the social cohesion of the country.

B. Progress of the mission

2. In order to speak to as many people as possible and to familiarize himself with the situation in each region of Australia, the Special Rapporteur travelled to Sydney (New South Wales), Cairns (Queensland) in the Torres Strait, Darwin and Alice Springs (Northern Territory), Melbourne (Victoria) and lastly Canberra (Australian Capital Territory). Owing to lack of time he was unable to travel to Western Australia, South Australia or Tasmania. He nevertheless considers that his visit enabled him to gather sufficient information to give as accurate a picture as possible of Australia regarding the questions relating to his mandate.

3. At each stage of his journey he talked to representatives of the Commonwealth Government and the organs of the various states and territories, including Mr. Philip Ruddock, Minister for Immigration and Multicultural Affairs, Reconciliation, and Aboriginal and Torres Strait Islander Affairs, and to representatives of national and local human rights institutions, including Ms. Alice Tay, President of the Human Rights and Equal Opportunity Commission, and Mr. William Jonas, Race Discrimination, and Aboriginal and Torres Strait Islander Social Justice Commissioner. He also met representatives of the Aboriginal and Torres Strait Islander communities, including Mr. Terry Waia, Chairperson of the Torres Strait Regional Authority, Dr. Philip Mills, Director of Thursday Island Hospital, Ms. Evelyn Scott, former Chairperson of the Council for Aboriginal Reconciliation, and Mr. Mick Dodson, Chair, Australian Institute of Aboriginal and Torres Strait Islander Studies. In addition, he talked to

representatives of several ethnic and immigrant communities, and organizations responsible for the integration of immigrants and inter-communal harmony. Lastly, he had working meetings with a number of independent and influential persons, Members of Parliament and representatives of civil society, including Justice Michael Kirby of the High Court, Ms. Margaret Reynolds, Senator and President of the United Nations Association of Australia, and Mr. Aden Ridgeway, only Aboriginal member of the Senate. A complete list of people whom the Special Rapporteur met is appended to this report.

4. The Special Rapporteur particularly welcomed the opportunity he was given to discover multiculturalism in action on the occasion of his visit to two primary schools - Narrambundah and Hughes - in Canberra, whose curricula take account of Australia's cultural diversity. He also discovered Australian rules football in Melbourne, where he watched a game between Essendon and West Coast: in fact, Essendon has for more than a century been the melting-pot for the members of various ethnic communities who are the backbone of this club. The celebration of the one hundredth anniversary of Australia's nationhood, which was held during the mission, gave the Special Rapporteur an opportunity to get to know a modern nation, committed to democracy, which, through respect for and pride in its cultural diversity, should be the prototype for the egalitarian and multi-ethnic State which seems to be emerging in this twenty-first century.

5. The Special Rapporteur thanks the Australian Government for its welcome and for the spirit of cooperation which contributed to the smooth progress of the mission. He also thanks the representatives of the Aboriginal communities and civil society and the independent personalities who kindly devoted some of their time to him. Lastly, he expresses his gratitude to Mr. Juan Carlos Brandt, director of the United Nations Information Centre, and his staff for their efficient support.

C. General overview

6. Australia, which emerged as a country in 1901 from the British colonization of the southern lands situated between the tenth and fortieth parallels, has an area 7,686,850 km^2. Originally inhabited by the Aboriginals, who were estimated to total 1 million when the first British settlers arrived in 1788, Australia now has a population of about 18,280,100, of whom more than 4 million were born abroad. The Aboriginals and Torres Strait Islanders number 352,970 and account for 2 per cent of the population.

7. Australia is a federal State with democratic foundations. The federation is composed of six federated states (New South Wales, Queensland, Western Australia, South Australia, Victoria and Tasmania) and two territories (Australian Capital Territory and Northern Territory). These federated entities retain broad powers in the areas of education, justice and the police, and share a number of areas of competence with the Commonwealth, notably in economic and social matters. Some of the people who spoke to the Special Rapporteur pointed out that the Australian democratic system had been established to the detriment of the Aboriginal peoples, who had long been oppressed and had not been accepted as full citizens until 1967.

8. In the area of human rights, Australia has ratified many international instruments for the protection of human rights, including the International Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Civil and Political Rights and the

two Additional Protocols, the International Covenant on Economic, Social and Cultural Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the Convention on the Rights of the Child. However, because of the criticism levelled by the Committee on the Elimination of Racial Discrimination against Australian legislation on land ownership by Aboriginals, the Australian Government expressed its intention to suspend cooperation with the treaty monitoring bodies and to press for reform of those bodies whose objectivity in the consideration of its periodic reports it questions. Australia is not a party to the Convention on the Elimination of All Forms of Discrimination against Women.

9. The Special Rapporteur's visit took place in a special political context. The Liberal Party of Prime Minister John Howard came to power in 1996 on the basis of a programme under which the Aboriginal question would be given secondary importance and drastic measures in relation to immigration and asylum-seekers would be proposed. Support for the One Nation party, which is xenophobic - not to say racist, was on the wane, but several interlocutors stated that its xenophobic views on immigrants and its racist discourse with regard to Aboriginals had led to a certain hardening of the Liberal Party's policy on immigration and the Aboriginals. This came about in particular through the review of the land ownership rights of Aboriginals, and the reduction of financial and human resources and the elimination of education, health and housing programmes addressed to them. Similarly, several programmes relating to the reception and integration of immigrants have been cut back. From the conversation the Special Rapporteur had with Ms. Mary Kalantzis, Dean of the Faculty of Education, Language and Community Services, Royal Melbourne Institute of Technology, and author of the book "A Place in the Sun. Recreating the Australian Way of Life", it is apparent that there is a certain apprehension about the emergence of a "new white Australia policy". But the Government says that it is determined to preserve Australia's policy of multiculturalism, which remains one of the country's assets.

I. LEGISLATIVE AND ADMINISTRATIVE FRAMEWORK FOR ACTION TO COMBAT RACISM AND RACIAL DISCRIMINATION

A. Legislative framework

10. The protection of the inhabitants of Australia against racism and racial discrimination is ensured by means of several federal laws and by laws adopted by individual states and territories. The most important laws in this respect are the Racial Discrimination Act 1975 and the Racial Hatred Act 1995, which constitutes an amendment to the former Act.

11. The Racial Discrimination Act 1975 was adopted pursuant to the International Convention on the Elimination of All Forms of Racial Discrimination. Section 9 prohibits all forms of racial discrimination at the federal level and in the various states and territories:

> "It is unlawful for a person to do any act involving a distinction, exclusion, restriction or preference based on race, colour, descent or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of any human right or fundamental freedom in the political, economic, social, cultural or any other field of public life."

The prohibition of racial discrimination covers various fields, including access to public places and transport, the provision of goods and services, the sale and occupation of land or the occupation of any residential or commercial plot or premises, membership of trade unions, employment and advertising. The law guarantees equality before the law. One of the specific characteristics of Australian law is that it does not require proof of discriminatory intent or motive for an act to be characterized as unlawful.

12. The Racial Hatred Act 1995 incorporated in the Racial Discrimination Act 1975 new provisions for the prohibition of unlawful actions done in public comprising offensive, insulting, humiliating or intimidating behaviour based on race, colour or national or ethnic origin.

13. Apart from federal legislation, New South Wales, Queensland, Western Australia, South Australia, Victoria, Tasmania and the Northern Territory have adopted their own laws which, mutatis mutandis, reflect the provisions of the federal laws. However, the legislation of the State of Victoria does not for the moment prohibit the expression of racial hatred; a bill to remedy this shortcoming is currently under consideration.

B. Organizations combating racism and racial discrimination

1. Human Rights and Equal Opportunity Commission

14. In order to ensure the effective enforcement of laws against racism and racial discrimination, the Federal Government and the various states and territories have set up several organizations with authority to receive complaints, conduct inquiries, and advise the authorities on measures needed to eliminate racism and racial discrimination.

15. As stated by Ms. Tay, President of the Human Rights and Equal Opportunity Commission, and the Human Rights Commissioner, at the federal level, the Commission is empowered to implement the Racial Discrimination Act 1975 and the Racial Hatred Act 1995. The Commission was established by the Human Rights and Equal Opportunity Commission Act 1986. As an independent institution, it receives and examines complaints of racial discrimination, and complaints about offensive, insulting, humiliating or intimidating behaviour based on race, colour or national or ethnic origin in accordance with the conditions of admissibility established by the laws for which it has responsibility. It tries to resolve these complaints through conciliation, but if it is unable to do so, the complainant still has the possibility of taking the case to the courts. The Commission is also responsible for conducting research and devising educational programmes to promote human rights. In particular, it ensures that Australian legislation is consistent with the commitments entered into by Australia following ratification of the international human rights instruments. Within the Commission, the Human Rights Commissioner assumes primary responsibility for matters relating to action to combat racism and racial discrimination.

16. Having had the opportunity to meet the representatives of the organizations responsible for combating racism and racial discrimination in Queensland, the Northern Territory and Victoria, the Special Rapporteur wishes to describe some of their activities below.

2. Combating racial discrimination in Queensland

17. The Anti-Discrimination Commission Queensland administers the Anti-Discrimination Act 1991 (ADA). The ADA aims to promote equality of opportunity for everyone by protecting them from unfair discrimination in various areas of public life and from sexual harassment. It provides protection against public acts of racial and religious hatred or vilification. The Commission has competence to receive complaints of discrimination, to inquire into and attempt to remedy them and to carry out investigations into contraventions of the ADA. Matters that are not resolved by the Commission are referred to the Anti-Discrimination Tribunal for hearing and determination. The Commission also undertakes community education programmes to prevent racism and racial discrimination.

3. Combating racism and racial discrimination in Victoria

18. The Equal Opportunity Commission Victoria was established in 1995 in accordance with the Equal Opportunity Act of Victoria with the mandate to eliminate unlawful discrimination and harassment in Victoria. It handles thousands of inquiries and complaints each year, and produces and runs training and education programmes designed to prevent discrimination and harassment and raise awareness of these issues. Complaints concerning both racial and religious discrimination have increased over the five past years; however, the percentage of such complaints was the same in 1999/2000 as in 1995/96.

19. The Equal Opportunity Commission Victoria publishes various kinds of information material, such as a review of complaints lodged by Aboriginal and Torres Strait Islander people and a booklet on how to implement equal opportunity in organizations. It also publishes *A Guide for Aboriginal People* and leaflets in different languages, such as *Making a complaint* in Amharic, Croatian, Greek, Italian, Somali and Tigrigna.

20. The government of Victoria proposed to introduce new legislation to promote racial and religious tolerance. The legislation will make it unlawful to vilify a person or a group on the basis of their race or religion. The government prepared and distributed a discussion paper on the proposal in order to hear and take into consideration the opinions of all members of the population. Community consultations were held in February 2001 and a legislative proposal was to be introduced into Parliament the same year.

4. Combating racial discrimination in the Northern Territory

21. The Northern Territory Anti-Discrimination Act 1992 is designed, subject to limited exceptions, to eliminate discrimination against persons on the grounds of race (including ethnic origin). The Northern Territory Anti-Discrimination Commission is an independent, impartial body established to investigate and help resolve complaints of discrimination and harassment. It also provides training and education about anti-discrimination and diversity policies to businesses, government departments, schools and individuals. Furthermore, it provides advice and assistance to persons relating to the Act as the Commissioner thinks fit. The Commission publishes factsheets in various languages including Tagalog, Vietnamese, Portuguese,

Indonesian, Mandarin, Japanese and Thai to facilitate access to it by people speaking these languages. It is also involved in the implementation of diversity programmes aimed at preventing Aboriginal people from entering the penal system.

C. Organizations and policies in support of Aboriginals and Torres Strait Islanders

22. In addition to the legislation and institutions set up to combat racism and racial discrimination in general, the Australian Government has established organizations to protect and improve the situation of certain groups whom it considers to be in a less favourable situation than the majority of other Australians owing to the effects of past, and even current, discriminatory practices. There are therefore organizations and institutions which devote particular attention to the Aboriginal and Torres Strait Islander peoples.

1. The Aboriginal and Torres Strait Islander Commission

23. The Aboriginal and Torres Strait Islander Commission (ATSIC) is the principal Commonwealth agency responsible for administering the affairs of the Aboriginal and Torres Strait Islander peoples. It is an advisory body responsible to the Office of Aboriginal and Torres Strait Islander Affairs, which administers a broad range of Commonwealth programmes for Indigenous Australians. It was established by the Aboriginal and Torres Strait Islander Commission Act 1989. Through its decentralized structure and operation, comprising representation of the Indigenous peoples, the formulation of policies and administration of projects, ATSIC endeavours to ensure convergence between the needs of the Indigenous peoples and the budgetary policies of the federal Government. The elected representatives of the Aboriginals and the Torres Strait Islanders are thus able to take decisions concerning programmes and policies affecting their communities, at the regional and national levels. These programmes and policies generally relate to the improvement of education and training standards, health, housing, land title, business creation by these peoples and participation in enterprises from which they derive an income. The Aboriginal and Torres Strait Islander peoples regard ATSIC as an instrument for their "self-determination".

24. There are two Indigenous groups in Australia, the Aboriginal peoples and the Torres Strait Islander peoples. Aboriginal peoples are the original owners and occupiers of the Australian mainland and Tasmania, while the Torres Strait Islander peoples are the original owners of the many islands in the Torres Strait to within five kilometres of the Papua New Guinea coastline. Torres Strait Islanders began moving in significant numbers from the Torres Strait to the mainland just after the Second World War, largely to improve their socio-economic status. They first worked as sugar-cane cutters in Queensland, then as maintenance workers for the Queensland railways, and later as workers for the construction of mine railways in Queensland and Western Australia. Today, Torres Strait Islanders are found in most urban centres and capital cities on the mainland. The only major exception to this are those who live in Aboriginal communities on Cape York and in the north of Western Australia. Despite this, and the fact that many Torres Strait Islanders are born and raised on the mainland, they identify strongly with Torres Strait Islander culture, which is derived from their homeland and their own Ailan Kastom (traditional custom). It is estimated that there are 32,792 mainland Torres Strait Islanders, almost 40 per cent of whom live in Queensland.

25. ATSIC is part of a large infrastructure of organizations - governmental and non-governmental - that provide services to the Aboriginal and Torres Strait Islander peoples. Commonwealth agencies, both inside and outside the portfolio of Aboriginal and Torres Strait Islander affairs, provide financial assistance for Aboriginal and Torres Strait Islander advancement either:

(a) Directly through grants to incorporated community organizations or, very rarely, to individuals (there are about 3,800 Aboriginal or Torres Strait Islander organizations which manage projects); or

(b) Through grants to state/territory governments.

These governments also fund Indigenous programmes, either as special projects or as part of their provision of services to the general community.

26. The activities of the Aboriginal and Torres Strait Islander companies and organizations are spread through the health services, legal services, housing cooperatives, land councils, and social, cultural and sports organizations; they are important self-management instruments for the Indigenous peoples. The federal Government has stated that in the period 1998-1999 1,887 million Australia dollars ($A) were specifically allocated to Indigenous peoples, which represents an increase in real terms in relation to the three previous years; over 70 per cent of these resources go to priority areas such as housing, health and employment. During the period 2001-2002, the federal Government will allocate over $A 327 million to Aboriginal affairs. The resources allocated to these peoples in the period 1981-2002 will therefore total $A 2,390 million. Mr. Philip Ruddock, Minister for Immigration and Multicultural Affairs, Reconciliation and Aboriginal and Torres Strait Islander Affairs, stated:

> "The 2001 budget contains a comprehensive and integrated set of initiatives which build on our record of providing more employment opportunities, appropriate housing, improved health and better educational outcome for Indigenous people. The budget confirms ATSIC's funding base and will provide over $A 100 million in extra funding over the next four years for new initiatives contained in a package called Australians Working Together. This package covers measures related to community capacity-building, the Community Development Employment Project (CDEP), support to students, native title claims, housing and improvement of Indigenous health."

2. The Torres Strait Regional Authority

27. On Thursday Island in the Torres Strait, the Special Rapporteur held a working meeting with the Torres Strait Regional Authority, an agency set up in 1993 to administer Islander affairs solely in the Strait; Islanders living on the mainland come within the ambit of ATSIC. There are 6,200 Islanders in the Strait living in a large number of communities comprising several hundred people belonging to three clans living on many islands (crocodile, snake and bird clans). The Islanders are recognized as a distinct people, with their own cultural practices, within Australia. They have a close link with the sea and nature, to which they say they belong.

The Authority is implementing a programme aimed at providing each island with basic infrastructure and services (schools, public health outlets or health posts) and creating jobs so as to stabilize the population. In fact, it is the lack of infrastructure that has given rise to the exodus of some 28,000 Islanders to the mainland.

28. The Islanders desire genuine autonomy, and hope that the Authority will not be attached to the State of Queensland and that the Strait region will be established as an autonomous territory.

3. Special projects and programmes for the Indigenous peoples

(a) Job creation for Indigenous peoples

29. To reduce the level of unemployment among Indigenous peoples, the federal Government launched an Indigenous Employment Programme in May 1999. The programme has three elements: a wage assistance and cadetship programme; an Indigenous small business fund; and a Job Network. In formulating this programme the Government has acknowledged the clear disadvantage faced by Indigenous Australians in employment status, as well as the difficulties in improving this situation. The Government acknowledges, for example, that in order to redress Indigenous unemployment they must consider the following characteristics of the Indigenous population: the unskilled or semi-skilled character of the workforce; the greater proportion of people in rural and remote areas; and the reliance upon publicly-funded employment opportunities. The focus of the policy is on improving opportunities in private enterprise. At this point, the policy is in its formative stages, and it is too early to establish whether it is sufficient to ensure the progressive realization of equality in employment opportunities for Indigenous people.

30. The Special Rapporteur visited Thursday Island hospital, which is among the projects receiving support from the federal Government. He was also able to appreciate the activities of the Aboriginal and Torres Strait Islander Commercial Development Corporation and the Institute of Aboriginal and Torres Strait Islander Studies in Canberra. The results of the three visits are outlined below.

(b) Thursday Island hospital

31. At Thursday Island hospital, the only hospital in the region, Dr. Philip Mills, who himself comes from the region, is implementing a health programme financed by the federal Government which comprises the analysis of the pathological factors resulting from certain aspects of modern life in the islands and the treatment methods deriving from the Islanders' traditions. He therefore makes use of healers and traditional doctors from the communities who form a council which is presided over by an elder and supervises health practices. In the opinion of Dr. Mills, many health problems existing in the region, such as diabetes, obesity, high blood pressure and mental disturbance, result from the culture clashes which have led to the modification of the Islanders' diet (reduced consumption of fresh, natural products and excessive consumption of canned foods

and sugar). However, the human and material resources allocated to the hospital still fall short of the needs of the inhabitants of the region. For example, the hospital does not have a full-time surgeon; a surgeon has to come once a week from the mainland. In addition, the cultural approach introduced at the hospital is not understood or supported by the federal or Queensland authorities.

(c) The Aboriginal and Torres Strait Islander Commercial Development Corporation

32. The Corporation was set up by the Government to incorporate Aboriginals and Torres Strait Islanders in the national economy and remove them from the social welfare system on which they are still heavily dependent. The Corporation contributes to the creation of joint ventures or businesses managed exclusively by Aboriginals or Islanders in various sectors of activity; it has shares in various enterprises and has, for instance, entered the insurance sector recently. It invests in ecotourism, supporting initiatives relating to accommodation and tours in the parks belonging to Aboriginals, agriculture, fisheries, aquaculture and mining. The Corporation, which was set up with subsidies amounting to $A 40 million, is today independent. It has made a profit of $A 2 million, which has been used to pay for scholarships for Aboriginal and Islander students and for the creation of small businesses. The Corporation pays no taxes on its profits. It is managed by a board of nine members appointed by the Minister for Immigration and Multicultural Affairs, Reconciliation and Aboriginal and Torres Strait Islander Affairs; six members must be Aboriginals or Islanders, including its Chairman and his deputy. It owns a building which was purchased thanks to a loan of $A 30 million from Japan.

(d) The Institute of Aboriginal and Torres Strait Islander Studies

33. This is a research organization set up to undertake studies into the history, culture and rights of Aboriginals and Torres Strait Islanders, and also their economic and social conditions. Its approach is distinct from the academic approach - which is often biased and leads to no improvement in the living conditions of the Aboriginals and Islanders - and adopts an Aboriginal and Islander perspective with the aim of meeting the needs of these peoples. It provides the necessary expertise to ATSIC for the design and execution of its projects. It has an annual budget of $A 7 million, which enables it to undertake research, issue publications, organize seminars and conferences, grant scholarships, and equip and expand its library. The Institute is considered to be one of the most important in the world working on aboriginal societies. It possesses over 2 million photographs and documents which are more than 200 years old.

D. The policy of multiculturalism

34. Programmes and institutions have also been established to promote good understanding between the various components of the Australian population. According to representatives of the federal Government, these programmes aim primarily at the harmonious integration of immigrants within Australian society and harmony between the various communities, stressing respect for ethnic diversity considered as an asset and not as an obstacle for the country and also respect for democratic values as the cement which bonds society together.

35. The policy of multiculturalism, which is explained in the quotation below, was adopted by the Government of Australia in 1973 as a means of adjusting to the changing structure of the Australian population and promoting a new national identity. The Government had initially, and especially since 1945, encouraged white immigration and Australia was seen as a white country. A profound change occurred in the 1970s, when Australia shifted from the "White Australia" policy to a non-discriminatory immigration policy, with a parallel transition from assimilation to integration and then to multiculturalism. Assimilation was the policy until the mid-1960s, drawing on a belief in homogeneity and a vision of Australia as a racially pure white nation, which effectively excluded non-European immigration. It also dominated the treatment of the Indigenous population, with, for example, forced adoption of Indigenous children into white families.

> "Multiculturalism implies that the inclusion and participation of migrants and their descendants in Australia occurs naturally, and within the bounds of the democratic and legal framework, the individual must be free to choose which customs to retain and which to adopt. This entails that all Australians must have the opportunity to be active and equal participants in Australian society and free to live their lives and maintain their cultural traditions. However, all Australians are expected to have an overriding commitment to Australia and the basic structure and principles common to Australian society. These are the Constitution, parliamentary democracy, freedom of speech and religion, English as the national language, the rule of law, tolerance, and equality - including equality of the sexes."

36. The Commonwealth Government's preferred term to describe people from non-English-speaking countries is "people from diverse cultural and linguistic backgrounds". Over 77,000 migrants and refugees arrive in Australia every year, of whom 12,000 enter under the Humanitarian Programme. The 1996 census revealed that 193 languages are spoken in Australia, there are people from 232 countries, 15.1 per cent speak a language other than English at home, and 14 per cent of Australians over 65 are from diverse cultural and linguistic backgrounds.

37. Strategies, policies and programmes have been designed to make administrative, social and economic infrastructure more responsive to the rights, obligations and needs of the culturally diverse population. This contributes to preserving social harmony among the different cultural groups in the society and to optimizing the benefits of cultural diversity for all Australians. In order to benefit all Australians, multicultural policies and programmes are built on the foundations of the Australian democratic system, using the principles of civic duty (obliging all Australians to support the basic structures which guarantee freedom and equality and enable diversity in society); cultural respect (subject to the law, all Australians have the right to express their own culture and beliefs and must respect those of others); social equity (entitles all Australians to equality of treatment and opportunity so that they are able to contribute to the social, political and economic life of Australia, free from discrimination); productive diversity (maximizes the significant cultural, social and economic dividends arising from the diversity of the population). The Government has adopted a plan of action, which includes providing Commonwealth leadership to, and cooperation with, other spheres of government, the private sector and the wider community in relation to diversity management programmes, and fostering closer working relationships with these sectors.

1. Programmes and institutions in charge of multiculturalism

38. The Department of Immigration and Multicultural Affairs (DIMA) is the main Commonwealth institution in charge of the promotion and realization of multiculturalism at the national level. It was instrumental in drafting A New Agenda for Multicultural Australia. This policy document stresses the Government's commitment to enhance and focus Australian multiculturalism to make it relevant to all Australians and ensure that the social, cultural and economic benefits of diversity are maximized in the national interest. DIMA is also responsible for refining and testing the new performance management framework under the Charter for Public Service in a Culturally Diverse Society, which allows departments and agencies to consider language and cultural diversity in the context of good business sense. Preliminary findings indicate that numerous benefits can be achieved from the new approach, and that much progress has been made in implementing the new Charter.

39. Some of the main features of the New Agenda for Multicultural Australia include:

(a) The Charter for Public Service in a Culturally Diverse Society has been designed to assist government programmes to meet the needs of the culturally and linguistically diverse Australia. It integrates a set of service delivery principles concerning cultural diversity into the strategic planning, policy development, budget and reporting processes of government service delivery - irrespective of whether these services are provided by Government, agencies, community organizations or commercial enterprises. The principles are access, equity, communication, responsiveness, effectiveness, efficiency and accountability. It also incorporates a best practice guide for achieving and reporting on government services. During 2001 the framework will be further refined in consultation with Commonwealth portfolio agencies and state, territory and local governments. This process will include discussion on how best to integrate the framework with the Charter itself;

(b) The Living in Harmony programme is a multifaceted programme that aims to build on Australia's successful record of community harmony by emphasizing its traditional values of justice, equality, fairness and friendship. It is administered by DIMA and the centrepiece of the project is a community grants programme which provides funding for projects that promote community harmony, reduce racial intolerance, and build on previous initiatives for raising cross-cultural awareness, tolerance and understanding. Along with the grants programme, DIMA has formed partnerships with several organizations, including state and territory governments, to develop projects aimed at improving social cohesion, tackling racism, or generating better understanding, respect and cooperation among people from different cultural backgrounds. DIMA suggests a number of activities to be undertaken by individuals or organizations to try and foster better relations in their local community, e.g. organizing a "harmony picnic or barbecue", planting a "harmony tree". Beyond Tolerance, for example, is a Living in Harmony project developed by Hughes primary school in Canberra, which the Special Rapporteur visited. It strives to achieve a culturally inclusive school by promoting cross-cultural awareness among children. This is done, for example, by encouraging children from various ethnic backgrounds to interact by sharing knowledge. Hughes primary school's teachers' Resource Guide underlines that the continuous professional development of staff

promotes understanding and tolerance. Narrambundah primary school, which the Special Rapporteur visited and which teaches children of diverse ethnic backgrounds, notably Aboriginal children, operates in the same spirit, integrating an Aboriginal dimension in the design of its curricula;

(c) The celebration of Harmony Day on 21 March (coinciding with the International Day for the Elimination of Racial Discrimination) all over Australia is an occasion to reinforce social cohesion. The Council for Multicultural Australia, the Special Broadcasting Services (SBS) and DIMA organize in various sectors - the workplace, schools and universities, sports clubs - activities in accordance with the Living in Harmony programme.

40. At the Commonwealth, state and territory levels are several institutions that have been created or endowed with the responsibility to draft and implement the various programmes and actions taken by the Government to enhance multiculturalism in Australia. Some of these institutions are presented below:

(a) The Special Broadcasting Services (SBS) is a national multicultural and multilingual broadcaster unique in the world. It broadcasts in more than 60 languages, and reaches a potential audience of about 18 million Australians. SBS Radio is the world's most linguistically diverse radio network, broadcasting in 68 languages to a potential audience of more than 2.5 million;

(b) The National Multicultural Advisory Council was established by the Commonwealth Government in July 1994 for a period of three years and in 1997 for a further three years. It was asked to develop a report that would recommend a policy and implementation framework for the next decade that is aimed at ensuring that cultural diversity is a unifying force for Australia. In 1999 the Council developed the report Australian multiculturalism for a new century: towards inclusiveness, consulting widely with the community. Its conclusion is that the Council is optimistic about Australia's future as a culturally diverse society and confident that Australian multiculturalism will continue to be a defining feature of the evolving national identity and contribute to substantial benefits for all Australians. The Council's vision is of a united and harmonious Australia, built on the foundations of democracy, and developing its continually evolving nationhood by recognizing, embracing, valuing and investing in its heritage and cultural diversity. Inclusiveness is the key to the principles of Australian multiculturalism recommended by the Council;

(c) The Council for Multicultural Australia (CMA) was established in July 2000, for an initial three-year period. It assists the Commonwealth Government to implement the New Agenda, particularly to raise awareness and understanding of Australian multiculturalism. The Council reports annually to the Prime Minister and to the Minister for Immigration and Multicultural Affairs. It is supported by DIMA and its objectives are to promote inclusiveness, benefits and harmony in a multicultural society;

(d) The Australian Citizenship Council is an independent body advising the Minister for Immigration and Multicultural Affairs on Australian citizenship matters that are referred to it by the Government. The Council reports to the Minister on contemporary issues in Australian citizenship policy and law to be addressed and produces policies on how to promote increased community awareness of the significance of Australian citizenship for all Australians, including its role as a unifying symbol;

(e) The Australian Multicultural Foundation (AMF) administers Believing in Harmony, a programme supported by the Commonwealth Government's Living in Harmony initiative. The project entails the bringing of panels into schools across Australia to provide students with the chance to hear first hand about traditions different from their own, to develop openness to new knowledge, to develop curiosity and interest in traditions of others, and to focus attention on belief and the notion of religion as a component of Australian society. AMF has provided schools with a tool kit, including a resource manual for teachers. AMF also sponsors youth activities, for example the Centre for Multicultural Youth Issues (CMYI) which tries to help newly arrived young immigrants by providing them with information to facilitate their integration in the country. One example is Landing on your feet - A legal information kit for new arrivals, which contains relevant legal information to minimize the impact of legal problems that newly arrived young people face in Australia. Areas of law that are covered in the publication include traffic and transport laws, family law concepts and practice, laws relating to personal safety, fair business and trade, police powers, equal opportunity laws, basic tenancy and property maintenance, laws relating to prescription of drug purchase and use and explanation of common contracts;

(f) Centrelink is an institution which delivers multicultural social services and programmes and payments from government departments to migrants and refugees in 42 languages,[1] i.e. clients speaking the languages in use at Centerlink are attended to in those languages. Centrelink links Australian government services and provides comprehensive access to participation in government programmes and services for over 6.2 million multicultural customers, more than 2.4 million of whom were born overseas, and more than 1.5 million in non-English-speaking countries. Centrelink provides information for staff and others in the community so that a higher level of service can be delivered to people from diverse cultural and linguistic backgrounds. For example, it issues a manual describing the different naming systems of various ethnic groups;

(g) The National Police Ethnic Advisory Bureau was established by the federal Government in response to the need to coordinate police responses to meet the challenges of the cultural, linguistic and religious diversity in Australian society. The Bureau has designed some "Governing Principles for Policing in a Culturally Diverse Australia" which provide police jurisdictions with a philosophical framework for the development of policies and projects that enhance harmonious relations between the police and ethnic communities. These governing principles include the following elements:

(i) Rejection of all 3 forms of racism, prejudice and bigotry;

(ii) Members of Australian police jurisdictions need to acquire cross-cultural skills through education and training;

(iii) In order to facilitate communication with all Australians the most effective means of communication should be used, including appropriately qualified and accredited interpreters and/or translators;

(iv) Particular care should be taken to avoid stereotyping media reporting regarding police interactions with members of ethnic groups;

(v) Police personnel should reflect as closely as possible the cultural and linguistic composition of Australia;

(vi) Close partnership with the communities should be developed through regular consultations.

The Bureau inspired the initiative of the Queensland Police to develop a partnership with Aboriginal and Torres Strait Islander peoples and communities based on a shared undestanding of how to provide a service appropriate to the community and one free of racism and other forms of discrimination, in particular through consultation and cooperation with the members of the community. An important element of this initiative is the appointment of an Indigenous Policy/Liaison Officer within the Cultural Advisory Unit of the Queensland Police Service.

41. The Commonwealth programmes are also implemented by states and local governments at their respective levels. In addition, they take their own initiatives in formulating programmes and activities.

2. Multiculturalism in Victoria

42. With a population of 4,414,288 (1996 census) Victoria is the most diverse state in Australia. The following characteristics are illustrative of its diversity:

- Overseas-born: 23.8 per cent (more than 44.5 per cent born overseas or have at least one parent born overseas);

- 151 languages spoken (nearly 20 per cent come from countries where a language other than English is spoken - the highest proportion of any state or territory);

- 100 different religions;

- Five largest groups of overseas-born Victorians: England, Italy, Greece, Viet Nam and New Zealand.

The government of Victoria is therefore committed to ensuring coexistence between the various groups which compose its population through many programmes administered by the Minister Assisting the Premier on Multicultural Affairs in cooperation with the Victorian Multicultural Commission and the Victorian Ethnic Affairs Commission.

43. The Victorian Multicultural Commission was established in 1993 with the vision of a seamless, tolerant and culturally diverse community served in a similar manner by government and private and community organizations. It takes a leadership role in encouraging ethnic communities to contribute to Victoria's development as a harmonious and culturally rich state, and assisting those communities to maintain their cultural identities. This is to be achieved by, inter alia, encouraging interactions between communities, using the media, disseminating information, consulting with the communities and encouraging government departments to meet performance and service standards when it comes to cultural diversity. It funds projects designed by ethnic associations aimed at promoting multiculturalism.

44. The Victorian Ethnic Affairs Commission's aim is to promote full participation by Victoria's ethnic groups in the social, economic and cultural life of the wider Victorian community. One of its major achievement was an inquiry conducted in 1995 of all government departments and agencies regarding procedures for delivering services to Victoria's ethnic communities. The inquiry sought to determine whether the existing administrative arrangements that provide for service delivery by state government departments and agencies to clients of non-English-speaking backgrounds were adequate and appropriate. The findings showed that people from a non-English-speaking background do experience some fundamental disadvantages owing to, inter alia, language barriers and underuse of interpreters; lack of understanding and acceptance in departments and agencies of the effect that differences in cultures and background have on the way clients experience services; and lack of data within agencies on actual and potential clients from ethnic communities.

45. The Commission made various recommendations which are being implemented to improve the quality of service provided to people from a non-English-speaking background. These recommendations cover the following areas: (a) Providing translations of information materials; (b) Using non-print media, such as ethnic radio and video, to inform ethnic communities about services; (c) Using interpreters; (d) Having bilingual workers; (e) Cross-cultural training; (f) Using ethnic organizations to deliver services; (g) Including people of non-English-speaking backgrounds in quality service surveys; and (h) Consultations with ethnic Communities.

3. Multiculturalism in Queensland

46. The Department of Multicultural Affairs of Queensland is a body of the Queensland government, responsible for developing policies that address the social and cultural needs of people from culturally and linguistically diverse backgrounds. Its supports various programmes and activities centred around the theme of multiculturalism. Among other initiatives, each year the Premier of Queensland presents the Queensland Multicultural Awards in recognition of the efforts Queenslanders have made to support harmony, reduce prejudice and combat discrimination in the state.

47. On 25 August each year, Queensland celebrates Australian South Sea Islanders Day as a way of remembering the tragedy suffered by those people during the colonial period and as an acknowledgment of their contribution to Queensland's prosperity. It is estimated that

about 50,000 South Sea Islanders, mostly men, came to colonial Australia, largely Queensland, in the latter part of the Nineteenth century. Some were kidnapped from their islands in the Pacific and enslaved in a process known as "blackbirding". Others came as indentured labourers, agreeing to work for a set time, consent being given by a thumbprint or mark on a contract that they had no real understanding of. South Sea Islanders were consigned to the sugar industry in the 1880s and their working conditions were generally very poor, and they were treated as inferiors by colonists. The Australian sugar industry was built on the muscle and the sweat of South Sea Islanders and without them there would have been no sugar industry in the nineteenth century. And many of them were deported at the turn of the century - 1906-1908 - in a quest for a white Australia, and those who remained were left for many decades on the fringes of white society.

48. Another activity of the Department of Multicultural Affairs of Queensland is its support for the Local Area Multicultural Partnership project (LAMP), which was established in 1988 as a key component of the government's Multicultural Queensland Policy. It is designed as a partnership strategy between the state and the local governments. LAMP aims to promote positive community relations across the whole community and facilitate improved levels of access to services, planning and consultation by diverse interest groups. In this framework, many ethnic festivals are celebrated by all Queenslanders during the year as a way of promoting diversity. In July 2001, Peace Week was held, featuring workshops, concerts and a dance festival. Two publications reflect Australia's cultural diversity:

(a) *A Fair Go. Portraits of the Australian Dream* is a book published to celebrate the cultural and ethnic diversity of Australia through the voices and experiences of 50 outstanding immigrants who chose to live in Australia. It also celebrates the fiftieth anniversary of Australian citizenship in 1999;

(b) *An Atlas of the Australian People*, produced for the Joint Commonwealth/State/Territory Population, Immigration and Multicultural Research Programme, provides an analysis of the socio-economic characteristics of overseas-born, Australia-born, Aboriginal-born and the Torres Strait Islander population based on usual place of residence and data from the 1996 census of population and housing.

4. Criticism of the current policy of multiculturalism

49. Several analysts consider that the new multiculturalism agenda promoted by the Government actually conceals a profound rethinking of policies in this area and the abolition of the institutions which in the past were responsible for their implementation. Ms. Mary Kalantzis draws particular attention to: the reduction of immigration to a strict minimum and the curtailment of programmes for the integration of immigrants; the assimilation of asylum-seekers to migrants; the mandatory detention of persons arriving in Australia other than under the humanitarian immigration programme; the introduction of a two-year waiting period for legally admitted immigrants before they are eligible for social security; reduction in language learning grants; reduction in grants to the Human Rights and Equal Opportunity Commission. The calling into question of the rights acquired by Aboriginals, the reorientation of the reconciliation

process and the conversion of the anti-racism programmes into "Living in Harmony" programmes more geared to assimilation goals are perceived as encroachments on multiculturalism.

50. This new approach is said to have created divisions within Australian society by setting those who regard themselves as belonging to "mainstream Australia", and are mainly from an English-speaking background, against the others. Mr. John Howard, the Prime Minister, is said to favour assimilation more strongly than the preservation of different identities within Australia; he has, for example, stated that "Australia made an error in abandoning its former policy of assimilation and integration in favour of multiculturalism".

51. Furthermore, the full realization of multiculturalism presupposes the recognition and elimination of the far-reaching effects which European colonization has left on Australian society. As Senator Aden Ridgeway pointed out, the persistent and effective destruction of Aboriginal societies has created sociological and psychological problems which manifest themselves through marginalization, inferiority complexes, mental illness, alcoholism, drug use and many other social evils among the Aboriginals. Australia's tragic past has been given prominence only recently but is now openly described in the works of historians such as Mr. Henry Reynolds, who, in his book "Why Weren't We Told?" (Penguin Books, 1999), questions the reasons why the violence which accompanied the occupation of Australia was hidden for so long. Similarly, it was not until 1997 that the report "Bringing them home", the result of an inquiry into the abduction of Aboriginal children for assimilation purposes, shed a harsh light on this past through passages such as the following:

> "Violent battle over rights to land, food and water sources characterized race relations in the nineteenth century. Throughout this conflict Indigenous children were kidnapped and exploited for their labour. Indigenous children were still being 'run down' by Europeans in the northern areas of Australia in the early twentieth century. Government and missionaries also targeted Indigenous children for removal from their families. Their motives were to 'inculcate European values and work habits in children, who would then be employed in service to the colonial settlers'."

52. There is no doubt that time is needed to eliminate the consequences of these practices and many others which the Special Rapporteur will refrain from mentioning out of a concern not to stir up the past and thereby jeopardize an already difficult process of reconciliation. But above all, what is needed is a genuine political will and sincere support for change on the part of the whole of Australian society. The achievements resulting from action to combat discrimination against the Aboriginals since 1967 - notably the calling into question of the legal fiction of terra nullius in the Mabo v. State of Queensland judgement - should therefore be preserved and reinforced. In addition, the successes and failures should be evaluated, but above all the voices of the victims and their descendants should be heeded. But the increasingly frequent reactions against reference to the misdeeds of colonization - the rejection of "black-armband history" - are causing concern to many interlocutors, who wonder whether this attitude is not prejudicial to genuine reconciliation between Indigenous and non-Indigenous inhabitants. The Special Rapporteur shares these doubts and concerns, but hails the significant progress made in action to combat racism and racial discrimination against Aboriginals.

II. FORMS AND MANIFESTATIONS OF RACISM, RACIAL DISCRIMINATION AND XENOPHOBIA: LIMITS OF LEGISLATIVE AND ADMINISTRATIVE MEASURES

A. The consequences of the destruction of Aboriginal societies and difficulties of reconciliation

1. Economic and social situation of the Aboriginals

53. Many interlocutors stress that, despite the measures taken by the Australian Government to combat racism and racial discrimination, these phenomena continue to affect Aboriginals and Torres Strait Islanders. This is particularly reflected in the restriction of land rights, level of education, access to employment, and health and housing conditions. The Race Discrimination and Aboriginal and Torres Strait Islander Social Justice Commissioner considers that the programmes set up by the Government to achieve equality between these peoples and the rest of the Australian population and the resources allocated to these programmes are insufficient. On the basis of data evinced by a recent study on public investments in the four priority areas designated by the federal Government (education, employment, health and housing),[2] the Commissioner observes that these investments do not enable Indigenous people to become integrated in an egalitarian manner within Australian society.

54. The study seeks to determine whether enough attention is given to Indigenous needs in these areas. The concept of need used in the study is "the additional effort (if any) required to bring outcomes for Indigenous people to comparable overall levels with the Australian population as a whole, or put differently, the effort to ensure that Indigenous Australians are treated equally". One of the general conclusions of the study is that "Indigenous people are more likely to access specific programmes designed to address their needs, rather than general programmes that are available, subject to eligibility criteria, to all Australians." This focus on specific programmes has developed due to the "unsuitability, or inaccessibility to Indigenous people, of general programmes". Reasons why general services may be inaccessible or unsuitable include the geographical location of Indigenous people, cultural reasons, and a preference for services delivered through organizations under Indigenous control. Accordingly,

> "A focus on special programmes for Indigenous people alone will provide a misleading picture of the distribution of public expenditure between Indigenous and non-Indigenous people. While Indigenous people benefit substantially more than other Australians from specific programmes, they benefit substantially less from many, much bigger, general programmes."[3]

55. The authors concluded the following about expenditure in each of the four areas considered:

(a) Education. Public expenditure on education is 18 per cent higher per capita for Indigenous people than for non-Indigenous in the 3-24 age group. Equity considerations require that there be additional expenditure on the education of Indigenous Australians, and this difference per head is a "very modest contribution" to reducing Indigenous disadvantage;

(b) Employment. Public expenditures on programmes for the unemployed are 48 per cent higher per unemployed Indigenous person than per non-Indigenous unemployed person. Part of this difference is explained by higher levels of long-term unemployment and higher average costs of employment programmes for Indigenous people, as well as the reliance upon Community Development Employment Projects (CDEP). The level of disadvantage faced by Indigenous people, the difficulties of maintaining employment levels for the rapidly expanding Indigenous population entering working age and the multiple objectives of the CDEP suggest that the margin "is not excessive";

(c) Health. The authors note that total funding per head, which includes privately and publicly funded health care, is 8 per cent higher for Indigenous people. Given the health status of Indigenous people, "allocation of public expenditure according to the need would almost certainly put more resources into health services for Indigenous people";

(d) Housing. Housing benefits expressed on a per capita basis indicate that non-Indigenous people received between 9 and 21 per cent more benefits than Indigenous people. Given the greater housing needs of Indigenous people, existing policies are "inequitable and inadequate" and this justifies "increased resources being put into programmes directed specifically towards addressing their housing needs".

These figures, when compared to the levels of disadvantage highlighted above, tend to indicate that while there are government funding and programmes aimed at redressing Indigenous disadvantage, they are clearly not sufficient to raise Indigenous people to a position of equality within Australian society. International human rights principles provide justification for giving higher priority to Indigenous disadvantage and for taking steps, or further steps, to redress this disadvantage and achieve equality of outcome.

56. The Commissioner expresses a further concern relating to the Australian Government's policy aimed at eliminating the unfavourable situation in which Indigenous Australians find themselves; it relates to the misconception that Indigenous people are better treated than non-Indigenous people because of the relative amount of resources assigned to them, when in fact more resources are needed in order to be able to improve the situation.

57. The following indicators determined on the basis of the 1996 census reflect the situation of Aboriginals:

Table 1

Indicators for Indigenous and non-Indigenous Australian adults

Indicator	Indigenous adults	Non-Indigenous adults
Holding a post-secondary qualification	11%	31%
Unemployment rate	23%	9%
Median income (males)	$189	$415
Median income (females)	$190	$224
Own house (or in process of purchasing it)	31%	71%
Life expectancy (males)	56.9 years	75.2 years
Life expectancy (females)	61.7 years	81.1 years

58. The Special Rapporteur's attention was particularly drawn to the situation of Aboriginal women, which the Australian Bureau of Statistics illustrates in the passage below following the survey undertaken in 1996:

> "The health disadvantage of Indigenous Australians begins early in life and continues throughout the life cycle. On average, Indigenous mothers give birth at a younger age than non-Indigenous mothers. In most states and territories, their babies are about twice as likely to be of low birth weight and more than twice as likely to die at birth than are babies born to non-Indigenous mothers.
>
> "The average age of Indigenous mothers was 24.0 years, compared to 28.6 years for non-Indigenous mothers. 23.1 per cent of Indigenous mothers were teenagers, more than four times the non-Indigenous rate (4.8 per cent); the proportion of low birth weight babies (less than 2,500 grams) of Indigenous mothers was 12.4%, more than twice the rate of non-Indigenous mothers (6.2 per cent); the foetal death rate among births to Indigenous mothers of 13.9 per 1,000 births was more than double that of 6.7 per 1,000 for non-Indigenous births."[4]

2. Restriction of land rights

59. The Race Discrimination and Aboriginal and Torres Strait Islander Social Justice Commissioner has made a detailed analysis of the consequences of the Native Title Amendment Act 1998. In this connection, he notes that despite decision 2 (54) of the Committee on the Elimination of Racial Discrimination adopted in August 1999, calling on Australia to suspend implementation of this Act, which is contrary to its international obligations, the Act continues to be applied. Notwithstanding that the validation provisions, the confirmation of extinguishment provisions, the primary upgrade provisions, and the restrictions concerning the right of Indigenous title holders to negotiate stipulated in the law discriminate against native title holders,[5] states and territories continue to implement the amended Act. The Commonwealth has not entered into negotiations with Indigenous peoples and extinguishment of native title continues to be effected by the states, under the authority of the Commonwealth Government. In particular, the validation provisions result in the loss or impairment of the rights of native title

holders in favour of the rights of non-Indigenous title holders. Generally, states and territories have been unwilling to negotiate an alternative to blanket validation legislation. The validation of intermediate-period acts deprives native title holders of procedural rights to engage in decisions about land, substituting a compensation scheme for rights removed.

60. Table 2 provided by the Race Discrimination Commissioner sets out the current status of validation legislation introduced by states and territories as at 30 June 1999. Changes that have occurred since August 1999 are indicated in bold type.

Table 2

Validation legislation introduced by the states and territories

State or territory	Legislative action	Status of legislation
New South Wales	Native Title (New South Wales) Amendment Act 1998	Proclaimed on 30 September 1998
Victoria	Land Titles Validation (Amendment) Act 1998	Parts 1 and 2 received assent on 24 November 1998
Australian Capital Territory (ACT)	Native Title (Amendment) Bill 1999	The bill is before the Legislative Assembly
South Australia	Statutes Amendment (Native Title) Bill (No. 2) 1998	Now lapsed
	Native Title (South Australia) (Validation and Confirmation) Amendment Bill 1999	**Introduced into Parliament which resumes 28 March 2000**
	Bill validates to full extent authorized by Native Title Act	
Western Australia	Titles Validation (Amendment) Act 1999	Assented to by Parliament on 5 May 1999
	Titles (Validation) and Native Title (Effect of Past Acts) Acts 1999	**Received assent on 13 December 1999**
	Exclusive possession intermediate period acts and public works now extinguish native title	
Northern Territory	Validation of Titles and Actions Amendment Act 1998	Assented to by Parliament on 28 August 1998 and commenced on 1 October 1998
Queensland	Native Title (Queensland) State Provisions Act 1998	Assented to on 3 September 1998
Tasmania	No proposed legislation to date	N/A

(a) The confirmation provisions

61. Section 23 E of the NTA provided that states and territories may introduce legislation that deems certain classes of tenure as well as specifically scheduled tenures granted before 23 December 1996 to have either extinguished or impaired native title. Native title holders are entitled to compensation for any extinguishment of native titles as a result of these provisions.

62. Table 3 sets out the current status of confirmation legislation introduced by states and territories as at 30 June 1999. Changes that occurred subsequent to August 1999 are indicated in bold type.

Table 3

Confirmation legislation introduced by the states and territories

State or territory	Legislative action	Status of legislation
New South Wales	Native Title (New South Wales) Amendment Act 1998	Royal assent and proclaimed on 30 September 1998
Victoria	Land Titles Validation (Amendment) Act 1998	Parts 1 and 2 received assent on 24 November 1998
Australian Capital Territory (ACT)	Native Title (Amendment) Bill 1999	The bill is before the Legislative Assembly
South Australia	Statutes Amendment (Native Title) Bill (No. 2) 1998	Now lapsed
	Native Title (South Australia) (Validation and Confirmation) Amendment Act 2000 **Bill confirms to full extent authorized by NTA**	**Received assent on 14 December 2000. Commenced on 22 January 2001**
Western Australia	Titles Validation (Amendment) Act 1999	Passed by Parliament on 5 May 1999
	Titles (Validation) and Native Title (Effect of Past Acts) Amendment Act 1999. This Act extinguished native title on all previous exclusive possession acts and all public works. It completes adoption of the schedule in the Native Title Act	**Received assent on 13 December 1999**

State or territory	Legislative action	Status of legislation
Northern Territory	Validation of Titles and Actions Amendment Act 1998 Lands and Mining (Miscellaneous Amendments) Act 1998 Statute Law Revision Act 1999	Assented to on 28 August 1998 and commenced on 1 October 1998
Queensland	Native Title (Queensland) State Provisions Act 1998	Assented to on 3 September 1998
Tasmania	No proposed legislation to date	N/A

63. Since August 1999, Western Australia has passed legislation confirming extinguishment on further titles. Extinguishment now includes all scheduled and other interests authorized by the amended Commonwealth NTA, with the exception of leases not still in force on 23 December 1996. These are known as historic leases. The Western Australian amendments confirm extinguishment of native title on a further 1,300 grants.

64. In the *Miriuwung Gajerrong* case.[6] In this case, Justice Lee, member of the High Court, found that, at common law, native title has survived on a number of leases, some of which had been included in the Commonwealth NTA schedule as extinguished titles. On 3 March 2000 the full bench of the Federal Court handed down its decision in the appeal of the *Miriuwung Gajerrong* case.[7] By a majority of two to one the appeal court overturned many of Justice Lee's findings regarding extinguishment of native title. The full court found that some titles scheduled to the Native Title Act *do* in fact extinguish native title, namely, conditional purchase leases and some special purpose leases under section 152 of the Land Act 1993 (WA). The court, however, also upheld Justice Lee's findings that other special purpose leases, including, for example, leases for canning and preserving, did *not* extinguish native title. With the exception of historic leases, these leases are now deemed, by the recent Western Australian legislation, to have extinguished native title. Native title holders are left with only a right to pursue compensation for this extinguishment.

65. The Western Australian legislation also expands the extinguishment of native title on land affected by public works. At common law and prior to the amendments, public works extinguished native title from the time of the commencement of construction or establishment of the public work, and extended only to the "footprint" of the work. The amendments provide for extinguishment from the time of the grant and expand the area of extinguishment to include the adjacent land and waters.[8]

(b) The right to negotiate provisions

66. In paragraph 7 of CERD decision 2 (54), the Committee expressed its concern that provisions within the NTA that place "restrictions concerning the right of Indigenous title holders to negotiate non-Indigenous land uses" are discriminatory. The Committee urged the Government to suspend implementation of the 1998 amendments.[9] Most states and territories have introduced legislation that contains provisions which restrict the ability of native title holders to negotiate over non-Indigenous land uses.

67. Table 4 sets out the current status of alternative right to negotiate legislation that the states and territories have introduced, as of 30 June 1999. Changes that occurred subsequently are indicated in bold type.

Table 4

State and territory legislation that adopts exceptions to the right to negotiate provisions

State or territory	Legislative action	Status of legislation
New South Wales	Sections 32-39, Native Title (NSW) Amendment Act 1998 (NSW) provide that the Administrative Decisions Tribunal will hear objections arising in relation to section 24MD (6B)	Proclaimed on 30 September 1998
	Amendments to the Mining Act and Petroleum Act (Onshore) Act 1991 ensure that particular grants qualify as either approved exploration grants (sect. 26A) or approved opal gem mining (sect. 26C). These provisions do not come into force until the Commonwealth Minister has made a determination. NSW has applied for a determination in relation to section 26C, but not for section 26A.	**The Commonwealth Minister was considering the application for determination at 18 January 2000**
Victoria	The Land Titles Validation (Amendment) Act 1998 amends the Pipelines Act 1967 in order to comply with the requirements of section 24MD (6B)	Enacted by parliament and in force No legislation as yet
ACT	No legislation is planned	N/A

State or territory	Legislative action	Status of legislation
South Australia	South Australia has had a state right to negotiate in place since 1994. Amendments in the Statutes Amendments (Native Title) Bill (No. 2) modify this scheme so that it complies with Native Title Act section 43. This bill also proposes to introduce provisions consistent with section 26A of the Native Title Act. Consultation in relation to the amendment to the right to negotiate provisions is continuing.	Introduced in parliament on 10 December 1998 **Consultations continue**
Western Australia	**The Native Title (States Provisions) Act 1999 (WA)** – **Replaces the right to negotiate with a state-based scheme (sect. 43);** – **Replaces the right to negotiate on pastoral leasehold land (sect. 43A);** – **Complies with the requirements of section 24 MDD (6B)**	**Bill received assent on 10 January 2000** **The WA Government has made an application to the Commonwealth Attorney-General for a determination**
Northern Territory	The following acts and regulations have been passed: – Land Acquisition Amendment Act (No. 2) 1998 – Mining Amendment Act No. 2) 1998 – Petroleum Amendment Act 1998 – Petroleum (Submerged Lands) Amendment Act 1998 – Land and Mining Tribunal Act 1998 – Energy Pipelines Amendment Act 1998 – Validation of Titles and Actions Amendment Act 1998 – Land Acquisitions Amendment Regulations 1998	Enacted by parliament and in force

State or territory	Legislative action	Status of legislation
	– Mining Amendment Regulations 1999 No. 14 – Petroleum Amendment Regulations 1999 No. 15 – Energy Pipelines Amendment Regulations 1998	
	The Attorney-General made three determinations that the alternative provisions complied with the requirements of the Commonwealth Native Act.	**Alternative provisions are presently inoperable due to the disallowance**
	On 31 December 1999, the Senate disallowed those determinations. Negotiations continue.	
Queensland	Native Title (Queensland) State Provisions Act (No. 2) 1998 introduces the following provisions: – Section 43 - state-based right to negotiate; – Section 43A - alternative right to negotiate; – Section 26A - exploration acts, but only on pastoral leasehold land; – Section 26B - gold or tin mining.	Assented to on 27 November 1998
	The Native Title (Queensland) Provisions Amendment Act 1999 significantly amends this Act	Assented to on 29 July 1999
	The Queensland Government sought 13 determinations from the Attorney-General. The consultation period ends 31 January 2000. A determination that the alternative provisions comply with the requirements of the Commonwealth Act is subject to disallowance by the Senate.	**Alternative provisions may become effective**
Tasmania	No proposed legislation to date	

(i) New South Wales (NSW)

68. The procedures applied by the New South Wales government with regard to native title and mining vary due to a number of NSW legislative exceptions to the right to negotiate in the Commonwealth Native Title Act (NTA):

(a) The Commonwealth Minister's determinations in February 2000 under section 26C NTA that certain land and waters in the Lightning Ridge and White Cliffs regions are "approved opal or gem mining areas";

(b) The Commonwealth Minister's determinations in February 2000 under section 26A NTA replacing the RTN for "low-impact" exploration acts with consultation regarding the protection of native title rights and interests and the signing of an access agreement;

(c) The Commonwealth Minister's determinations in November 1996 under section 26 (3) of the NTA (prior to its amendment) that the grant and renewal of mineral and petroleum exploration licences and special prospecting authorities are not subject to the RTN at the time of grant, but instead are subject to a condition that the holder is precluded from prospecting on any land over which native title may exist without the prior written consent of the New South Wales Minister for Mineral Resources.

The result of this scheme is that the right to negotiate does not automatically apply to the grant or renewal of any mineral or petroleum exploration licence or prospecting permit in NSW.

(ii) Queensland

69. During 1998 and 1999 the government amended the Mineral Resources Act 1989 (Qld) and enacted the Land and Resources Tribunal Act 1999 (Qld) for the purpose of establishing alternative provisions[10] to the right to negotiate under the NTA (the "alternative provisions"). Significant opposition was voiced to the alternative provisions, including by the Queensland Indigenous Working Group (QIWG), which argued that the alternative provisions were discriminatory and should not be allowed. QIWG objected in particular to the alternative provisions because:

(a) They relied mainly upon the 1998 amendments to the NTA and so constituted a repudiation of the compact between Indigenous and non-Indigenous Australians made in 1993 and embodied in the NTA;

(b) The effect of the alternative provisions would be to remove or reduce native title holders' procedural rights in circumstances where opportunities for agreements had not been fully explored; and

(c) The 1998 amendments to the NTA, upon which the alternative provisions relied, had been criticized by CERD in decision 2 (54) as being inconsistent with Australia's international treaty undertakings.

In their original form[11] the alternative provisions would have removed native title holders' right to negotiate all mineral exploration, including high impact exploration, even though this can cause widespread and permanent damage to land and to Indigenous peoples' cultural heritage.

70. While Commonwealth Attorney-General Daryl Williams made 13 determinations on 31 May 2000 allowing all of the Queensland alternative provisions, only some of these were allowed by the Commonwealth Senate.[12] In the course of the Senate debate Senator John Faulkner tabled a letter from Queensland Premier Peter Beattie to Opposition Leader Kim Beazley that contained the terms of a compromise reached between the Queensland and Commonwealth governments that informed the Opposition's vote in the Senate. In order to make good the compromise accepted by the Commonwealth Senate, Premier Beattie tabled the Native Title Resolution Bill 2000 in the Queensland parliament on 5 September 2000. The Queensland alternative provisions, in their modified form, commenced operation on 18 September 2000. Whilst some differences remain between the New South Wales and Queensland schemes in relation to the "low impact" exploration processes, Premier Beattie substantially complied with his undertaking to amend the Queensland alternative provisions upon the enactment of the Native Title Resolution Act 2000 (Qld).

(iii) Northern Territory

71. The Northern Territory was the first government to seek approval from the Commonwealth in relation to its alternative right to negotiate regime. In considering the scheme the Attorney-General was required by the NTA to take into account submissions made by Aboriginal and Torres Strait Islander representative bodies. Despite their objections to substantial areas of the scheme, it was approved. The motion succeeded on the basis that if it were not disallowed the Northern Territory could make subsequent amendments to its legislation without referral back to the Commonwealth Parliament. Only the Commonwealth Attorney-General would have an ongoing supervisory role over subsequent amendments. It was considered that this was insufficient to ensure that Indigenous concerns over the state regimes were adequately addressed. A further factor considered by the Senate was the failure of the Northern Territory government to obtain the consent of the land councils. Consequently, the Northern Territory "alternative provisions" never came into effect. The right to negotiate under the Native Title Act (Commonwealth) operates in the Northern Territory.

72. There are alternative procedures available within the NTA which incorporate the principle of effective participation - namely, Indigenous land use agreements. Representative bodies and many other stakeholders support the pursuit of such agreements where appropriate and where the future acts regime has been so affected by discriminatory amendments that it fails to protect native title.

(iv) Western Australia

73. Western Australia passed the Native Title (State Provision) Act 1999 which provides for a state Native Title Commission to administer:

(a) Future acts on unallocated Crown land and Aboriginal reserves under section 43;

(b) Replacement of the right to negotiate on pastoral lands with the lesser notification and consultation provisions of section 43A;

(c) A regime for the operation of section 24MD (6B).

74. The alternative provisions will have effect in the event that the Attorney-General makes the determinations regarding future mining acts. Native title matters which come within the provisions will be administered by a state tribunal. The consultation period concluded on 31 January 2000. If the Attorney-General makes the determinations, the regime will come into force unless it is disallowed by a successful motion in the Senate.

75. The Race Discrimination and Aboriginal and Torres Strait Islander Social Justice Commissioner states that in order to restore the principles of equality and non-discrimination in state and territory legislation it would be necessary to amend the Commonwealth Native Title Act so as to make it consistent with the Racial Discrimination Act 1975 (Cth).

3. Discrimination in the administration of justice

76. In connection with the administration of justice, two questions attracted the attention of the Special Rapporteur: the high percentage of Aboriginals in the criminal justice system and their deaths in prison and detention centres, and the discriminatory nature of the mandatory sentencing laws in the Northern Territory and Western Australia. The representatives of the Commonwealth Government and all other people with whom the Special Rapporteur spoke agree that the high percentage of Aboriginals and Torres Strait Islanders results from their socio-economic marginalization and the destructuring of their society. The measures already in place to remedy this situation will only take effect in the long term.

77. The Race Discrimination and Aboriginal and Torres Strait Islander Social Justice Commissioner stated that all levels of government have failed adequately to respond to the recommendations of the Royal Commission into Aboriginal Deaths in Custody and the national inquiry into the separation of Aboriginal and Torres Strait Islander children from their families. These reports make numerous recommendations aimed at redressing the underlying causes of Indigenous over-representation in the criminal justice, juvenile justice, and care and protection systems. Many of the recommendations have not been acted upon or are actively rejected by governments. The Commissioner makes the following observations in his report for the year 2000:

> "From 1988 to 1998, the Indigenous prison population (across all age groups) has more than doubled. It has grown faster than non-Indigenous prisoner rates in all jurisdictions. Nationally, Indigenous prison populations have increased by an average of 6.9 per cent per year for the decade. This is 1.7 times the average annual growth rate of the non-Indigenous population;"

"Figures for the June 1999 quarter indicate that 76 per cent of all prisoners in the Northern Territory and 34 per cent of all prisoners in Western Australia were Indigenous. The rate of imprisonment of Indigenous people in Western Australia was 21.7 times higher than that of non-Indigenous populations. The rates in the other states for which statistics are available are also unacceptably high - 15.7 times higher in South Australia, 12.2 times higher in Victoria, 11.3 times higher in Queensland, 9.9 times higher in the Northern Territory and 5.1 times higher in Tasmania;"

"Aborigine adults make up 17 per cent of prison inmates but only 1.6 per cent of Australia's adult population. Indigenous children are also over-represented in the juvenile justice system, with about 40 per cent of children in 'corrective institutions for children' identified as Indigenous in the 1996 census."

78. In 1987, the Royal Commission into Aboriginal Deaths in Custody found that Indigenous people are more likely to die while in custody than are non-Indigenous people and reported on the deaths of 99 Aboriginal people between 1980 and the end of 1990. The Commissioner reported that in the decade since that time 147 Indigenous people died; 17.2 per cent of all prison deaths in the 1990s have been Indigenous peoples compared to 12.1 per cent in the 1980s. The measures adopted by the governments at all levels have not yet produced concrete results.

Mandatory sentencing

79. The mandatory sentencing which was introduced in the State of Western Australia and in the Northern Territory in 1997 is tending to aggravate the already precarious social situation of Aboriginals. At first sight the relevant law is not discriminatory since it is aimed at punishing a number of offences against private property without distinctions relating to ethnic or racial origin. But in the effects of its implementation it is discriminatory since it covers the kinds of offence generally committed by persons belonging to an ethnic minority and of low economic and social condition, mainly Aboriginals. The sentence established by the law is not proportional to the offence committed and allows the judge no discretion. In brief, the sentences are as follows:

(a) Adults: first offence, 14 days' imprisonment; second offence, 90 days' imprisonment; third offence, 12 months;

(b) Juveniles: second offence, minimum of 28 days' imprisonment or alternative penalty; in the case of reoffenders, a minimum of 28 days' imprisonment.

Studies have shown that the offences generally punished under this law relate to theft. But the law has had no real effect on reducing these offences while at the same time increasing the prison population, notably in the Northern Territory (see table 5).

Table 5

Mandatory sentencing and custody rates, juveniles, adults and women in the Northern Territory*

Exponential increase in juveniles in custody

- Juvenile detentions have risen by 145% since 1996/97
- Remand commencements have increased by 58% since 1996/97

Juveniles are especially affected by mandatory sentencing because they tend to commit property offences

- 89% of the offences committed by juveniles in detention were property offences

The number of Aboriginal children in custody

- In 1998/99, 75% of juveniles in detention were Aboriginal

Women

- The number of women in prison in the NT increased from 50 in 1995/96 to 276 in 1998/99, an increase of 552% since the introduction of mandatory sentencing
- The number of Aboriginal women in prison in the NT increased from 43 in 1995/96 to 252 in 1998/99, an increase of 586% since the introduction of mandatory sentencing

Adults

- The territory imprisons almost four times as many of its citizens as any other state or territory of Australia
- Between June 1996 and March 1999 adult imprisonment increased by 40%
- Aboriginal people make up 77% of the Northern Territory's prison population

*Source: The figures are derived from the Northern Territory Correctional Services annual reports from 1996/97 to 1998/99.

80. Just as he was completing the drafting of his report, the Special Rapporteur was informed that, following the taking-over of government by the Labour Party in the Northern Territory and on the initiative of four Aboriginal deputies belonging to that party, the mandatory sentencing law was abolished in the territory. Stress is increasingly laid on "diversionary programmes" aimed at preventing crime and implementing alternative penalties for persons committing minor offences. The Race Discrimination Commissioner for the Northern Territory and several other social protagonists (churches, Aboriginal community associations, lawyers, human rights organizations) have made efforts to explain these programmes to the Aboriginal communities and find with them alternative solutions to imprisonment. These programmes cover the prevention of drug use, prevention of violence, measures aimed at the rehabilitation of young offenders, and conferencing (mediation between the victim and perpetrator of a crime). It is therefore to be hoped that the State of Western Australia will follow the example of the Northern Territory.

4. The blocking of the "stolen generation"

81. From the late 1800s until 1969 Australia had a policy of removing Indigenous children from the families, allegedly out of concern for their well-being. As many as 100,000 children are estimated to have been separated from their families. These are known as the "stolen generations". Indigenous children were put into institutions run by government and churches, adopted by white families and fostered into white families as part of a policy of assimilation. Far from being saved from neglect or destitution, many were imprisoned in institutions without enough food, without enough clothes, without love. Many were regularly victims of physical, psychological and sexual abuse. Today Indigenous children and young people continue to be removed from their families at a higher rate than the general population.[13]

82. The devastating impact of forcible removal policies was finally given proper public recognition during the Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families by the Human Rights and Equal Opportunity Commission. It documented the grief, trauma and loss of culture resulting from the policies. The report of the inquiry, *Bringing Them Home*, issued in 1997, concluded that the forcible removal policies were a denial of common-law rights and a serious breach of human rights. The report recommended reparations for these violations. It said they were a breach of human rights amounting to genocide.[14] The report estimates that between 1910 and 1970, 10-30 per cent of Indigenous children were taken from their families to be raised in institutions or fostered out to white families. *Bringing Them Home* made a total of 83 recommendations in four major categories:

(a) Reparation or compensation to individuals, families, communities and descendants;

(b) Acknowledgement and apology as essential components of reparation and reconciliation;

(c) Provision of family reunion health, counselling and other services; and

(d) Legislative change to introduce uniform policies and practices governing child removal in contemporary Australia.

83. The Aboriginal and Torres Strait Islander Commission stated that the Commonwealth Government responded positively to only 6 of the 62 recommendations for which it had primary responsibility. It agreed to fund the expansion of family reunion services, a national network of Indigenous mental health services, and record keeping and oral history projects. ATSIC feels that the central recommendations of the report were ignored and the Government rejected the call for a national apology to the stolen generations, stating that it is impossible to evaluate by contemporary standards decisions that were taken in the past. It also questioned the use of the term "stolen generations", since not an entire generation was affected. The Government further questioned whether the motivation for removal was racist, and stated that the treatment of separated Aboriginal children was essentially lawful and benign in intent and also reflected wider values applying to children of that era.[15] The level of government funding ($A 63 million over four years) and the way it has been spent has been criticized by many other Indigenous organizations as well.

84. To help move the debate about providing adequate reparation forward, a reparations tribunal has been proposed, based on the views of Indigenous Australians. It would deliver reparations measures, including compensation, and would be established and funded by the federal and state governments and the churches involved in the removal policies.[16] The proposal has been rejected by the federal, state and territory governments.[17] And since that time they have also rejected the inquiry's calls for a national apology and acknowledgement of the history of forcible removals in the name of assimilation. The reasons advanced by the federal Government for rejecting the recommendations concerning compensation are that the practices in question were sanctioned by the law in force at that time, that they were intended to assist the people to whom they were applied, and that the implementation of an equitable and practicable compensation system would create serious difficulties (absence of witnesses and records, in view of the length of time elapsed). The Government has therefore preferred to provide financial support for initiatives facilitating family reunion and psychological support for victims. The Government has also failed to accept the human rights evaluation of past practices by denying its genocidal nature as recognized by the Commission in its report.

85. Some members of the stolen generations have filed cases in federal court. The Gunner-Cubillo case, which was turned down, was a test case for an estimated 700 members of the stolen generations who are prepared to take their claims to court. The Commonwealth first attempted to have the case struck out and then defended it, contending that the children were more rescued than stolen. The judge found the Commonwealth had not breached its "duty of care" with respect to the removal from their families and their subsequent mistreatment in the Northern Territory institutions.[18]

86. One striking aspect of the policy of separation of Aboriginal children from their families is the unpaid wages of these children. The authorities sent removed children to work on farms or in factories; however, as the children were not trusted to receive their wages, these were to be held in trust for them until they reached the age of 21. ATSIC is currently researching the issue of such trust fund accounts in relation to the State of Queensland. Mr. Melrose Donley, a claimant, has been unsuccessful in getting salary paid since 1935, when he reached 21. He requested the assistance of the United Nations in this matter and reported that moneys held on behalf of members of the stolen generations may total more than $A 20 million.

87. For many Aboriginals the defensive attitude adopted by the federal Government on matters that are very painful to them cast doubt about its real desire to achieve a meaningful reconciliation with Aboriginal peoples. It is then worth recalling the words of Sir William Deane, the Governor-General of the Commonwealth of Australia, when he received the *Bringing Them Home* report:

> "It should, I think, be apparent to all well-meaning people that true reconciliation between the Australian nation and its Indigenous peoples is not achievable in the absence of acknowledgment by the nation of the wrongfulness of the past dispossession, oppression and degradation of the Aboriginal peoples".

5. Difficulties in the reconciliation process

88. The majority of Australians are in favour of reconciliation between Indigenous and non-Indigenous inhabitants, but there is disagreement between the Government and the Indigenous inhabitants on the right paths towards such an understanding. From 1991 to 2001, a Council for Aboriginal Reconciliation has worked to find ways and means of achieving reconciliation between all the component members of the Australian population. When the Council had completed its work, on 27 May 2000 it submitted to the Australian Prime Minister and Parliament a Declaration towards Reconciliation and a "Roadmap for Reconciliation". The Declaration reads as follows:

> "We, the peoples of Australia, of many origins as we are, make a commitment to go on together in a spirit of reconciliation.
>
> "We value the unique status of Aboriginal and Torres Strait Islander peoples as the original owners and custodians of lands and waters.
>
> "We recognize this land and its waters were settled as colonies without treaty or consent.
>
> "Reaffirming the human rights of all Australians, we respect and recognize continuing customary laws, beliefs and traditions.
>
> "Through understanding the spiritual relationship between the land and its first peoples, we share our future and live in harmony.
>
> "Our nation must have the courage to own the truth, to heal the wounds of its past so that we can move on together at peace with ourselves.
>
> "Reconciliation must live in the hearts and minds of all Australians. Many steps have been taken, many steps remain as we learn our shared histories.
>
> "As we walk the journey of healing, one part of the nation apologizes and expresses its sorrow and sincere regret for the injustices of the past, so the other part accepts the apologies and forgives.

"We desire a future where all Australians enjoy their rights, accept their responsibilities, and have the opportunity to achieve their full potential.

"And so, we pledge ourselves to stop injustice, overcome disadvantage, and respect that Aboriginal and Torres Strait Islander peoples have the right to self-determination within the life of the nation.

"Our hope is for a united Australia that respects this land of ours; values the Aboriginal and Torres Strait Islander heritage; and provides justice and equity for all".

89. The "Roadmap" comprises the following six main points:

(a) The Council of Australian Governments agrees to implement and monitor a national framework whereby all governments and the Aboriginal and Torres Straits Islander Commission work to overcome Aboriginal and Torres Straits Islander peoples' disadvantage through setting programme performance benchmarks that are measurable, are agreed in partnership with Aboriginal and Torres Straits Islander peoples and communities, and are publicly reported;

(b) All parliaments and local governments pass formal motions of support for the Declaration towards Reconciliation and the Roadmap for Reconciliation, enshrine their basic principles in appropriate legislation, and determine how their key recommendations can best be implemented in their jurisdictions;

(c) The Commonwealth Parliament prepares legislation for a referendum which seeks to: recognize Aboriginal and Torres Straits Islander peoples as the first peoples of Australia in a new preamble to the Constitution; and remove section 25 of the Constitution and introduce a new section making it unlawful to adversely discriminate against people on the ground of race;

(d) Recognizing that the formal Reconciliation process over the last decade has achieved much and has helped bring Australians together, all levels of government, non-government, business, communities and individuals commit themselves to continuing the process and sustaining it by:

(i) Affirming the Declaration towards Reconciliation and translating the Roadmap for Reconciliation into action;

(ii) Providing resources for reconciliation activities and involving Aboriginal and Torres Straits Islander peoples in their work;

(iii) Undertaking educational and public awareness activities to help improve understanding and relations between Aboriginal and Torres Straits Islander peoples and the wider community; and

(iv) Supporting Reconciliation Australia, the foundation that has been established to maintain a national leadership focus for Reconciliation, report on progress, provide information and raise funds to promote and support Reconciliation;

(e) Each government and parliament:

(i) Recognizes that the land and its water were settled as colonies without treaty or consent and that to advance Reconciliation it would be most desirable if there were agreement or treaties; and

(ii) Negotiates a process through which this might be achieved that protects the political, legal, cultural and economic position of Aboriginal and Torres Strait Islander peoples;

(f) The Commonwealth Parliament enacts legislation to put in place a process which will unite all Australians by way of agreement, or treaty, through which unresolved issues of Reconciliation can be resolved.

90. The federal Government refused to allow apologies to be presented by "one part" to the other part of the Australian nation as desired by the Indigenous peoples, but agreed that, on the other hand, all Australians should express deep regret for the injustices of the past. The Australian Prime Minister expressed his views as follows, but without receiving the assent of the Indigenous peoples:

> "As we walk the journey of healing, Australians express their sorrow and profoundly regret the injustices of the past and recognize the continuing trauma and hurt still suffered by many Aboriginals and Torres Strait Islanders."

91. Similarly, the Government is opposed to the signing of an agreement or treaty that would settle once and for all the question of relations between the Indigenous peoples and the Australian State, thereby completing the process of reconciliation, in conformity with recommendations 5 and 6. It has agreed to build a symbolic monument on the site of the Australian Parliament in Canberra in order to seal the Reconciliation. The Indigenous peoples, for their part, say they support the framing of a treaty and have begun consultations on this question within their communities - despite each clan's insistence on affirming its identity or specific cultural character. The agreement is almost unanimous on the land question. The Aboriginals intend to recover their right of ownership in order to genuinely exercise their right to development, if only in the context of autonomous territories. They consider that "the reconciliation process has made clear the pressing need for Aboriginal peoples to negotiate freely the terms of their continuing relationship with Australia. There is also a pressing need for non-Indigenous people to re-establish the foundations of a nation which can no longer justify the means by which its sovereignty was first acquired. The recognition of Indigenous peoples' right to their land and the origins of a nation are inextricably related and that changes to one part of the relationship [imply] and require changes to the other. Developments in native title law reflect upon the ethical foundations of the nation".

92. In its report to the Prime Minister and the Parliament, the Council for Reconciliation included a draft bill which forms a framework for the ongoing negotiation of unresolved issues between Indigenous and non-Indigenous inhabitants. Those unresolved issues are relevant to social justice and equality, land culture and heritage, self-determination and political participation and constitutional and legislative reform. The Council stressed that further action is needed to resolve such matters as deaths in custody, native title, the stolen generations, Aboriginal and Torres Strait Islander law, and the protection of Aboriginal and Torres Strait Islander cultures, heritage and languages. An unresolved issue that needs to be negotiated and agreed upon before reconciliation can be achieved is the recognition of Indigenous peoples' right to land. The resolution of this issue with the informed consent of Indigenous people would exclude the extinguishments of native title.

B. Racial discrimination affecting other communities

1. Anti-Semitism

93. In Melbourne, the Special Rapporteur met a number of representatives of Jewish organizations, including Mr. Danny Ben-Moshe, Executive Director of B'nai B'rith Australia and New Zealand, and Ms. Nina Bassat, President of the Executive Council of Australian Jewry, who told him that there are approximately 110,000 Jews (0.5 per cent of the population) living in Australia, mainly in New South Wales, Victoria and South Australia. Generally speaking, the Jews are well integrated in Australia, where they are active in all spheres of society. There is no anti-Semitic culture in Australia, and consequently the Jews are not exposed to systematic anti-Semitism. The Jewish organizations cooperate with the various Australian ethnic communities and consider Australia's ethnic diversity to be an asset which must be preserved. The Executive Council of Australian Jewry, which supports the process of reconciliation with the Indigenous peoples, is a member of the Council for Multicultural Australia. However, there are occasional manifestations of anti-Semitism resulting from repercussions of the Middle East conflict within Australian society and the activism of certain individuals and political organizations. Thus theories about the "Jewish plot to dominate the world", the negation of the Holocaust and stereotypes relating to the economic and financial power of the Jews are propagated by certain media, the extreme right-wing party "One Nation" and organizations of the same ilk, the Citizens' Electoral Council, the Australian League of Rights and the Adelaide Institute. In view of the fact that people of Jewish origin work as lawyers or jurists, provide support for Aboriginal land claims and oppose mandatory sentencing, the far-right organizations also accuse the Jews of supporting the Aboriginal cause in order to divide and dominate Christian Australia.

94. Anti-Semitic incidents occasionally occur in Australian cities. These take the form of physical assaults, desecration of cemeteries, attacks on and vandalizing of synagogues, Jewish institution buildings and property belonging to Jews, anti-Semitic graffiti and anti-Semitic messages by ordinary mail or e-mail. In the year 2000, 372 incidents of this type were recorded by the Executive Council of Australian Jewry in New South Wales, Victoria, Queensland, Western Australia and the Australian Capital Territory. This represents a 47 per cent increase over incidents in 1999. The community has therefore adopted its own security system to prevent possible attacks on its members and to alert the police.

95. The Jewish organization representatives also expressed concern about racist propaganda disseminated on the Internet by sites in Australia. A complaint was lodged in 1996 by the Executive Council of Australian Jewry with the Human Rights and Equal Opportunity Commission against the activities of the Adelaide Institute and its leader, Frederick Toben, who disseminate the most insidious anti-Semitic propaganda. Despite the Commission's order to the Adelaide Institute to cease its anti-Semitic propaganda and to apologize to the complainant, this organization is continuing its activities and the Council has had to take the matter to the High Court in order to secure enforcement of the Commission's decision. The Court is expected to issue a decision on this case in the course of 2002.

2. Anti-Arab racism and discrimination

96. The situation of Australians of Arab origin was described to the Special Rapporteur by representatives of the Australian Arabic Council, whose President, Mr. Roland Jabbour, he met in Melbourne. The community comprises about 1 million members and is diverse in nature; most of its members originate from Lebanon, but there are also members from Egypt, Palestine, Iraq and north Africa. Most of them live in New South Wales, South Australia and Victoria. Although Arabs are fairly well integrated within Australian society (several political leaders and prominent businessmen are of Arab origin), they are worried about the persistence of stereotypes concerning them which sometimes lead to racist acts and discriminatory treatment, and notably to anti-Arab discourse combined with anti-Muslim discourse in the media:

> "Mainstream Australia's recognition of and response to Arabic communities remains largely dependent upon generalized and stereotypical representations of Middle Eastern cultural practices, dress, cuisine and so on. Whilst Arabic culture is in this way appropriated within orientalized, rustic and romanticized images of the Arabic world made palatable to a mainstream Australian audience, such images fail to adequately convey the individual and collective experiences and aspirations of Arabic communities long established in Australia.
>
> "Such images work to homogenize Arabic culture, whereby class, gender, religious, cultural, social and political differences are wholly subsumed within the generic identification of the 'Arab' per se.
>
> "The other side to stereotypical representation is that Arabic communities are often equally eschewed through the kaleidoscope of perceived threat, Arab irrationality, anxieties about their mob mentality and their propensity for violence. A recent example of this is the way that the increase of violent crimes in Sydney was linked to the proliferation of Lebanese and Asian 'ethnic gangs' using the argument that violence is an accepted part of everyday life in their countries of origin."

97. The Council drew particular attention to the tendency for a certain sector of the Australian press to assimilate Arabs and Muslims and terrorism, and expressed the fear that "until multiculturalism in Australia further develops the sort of framework in which diversified, viable and contemporary representations of the Arabic community can be more fully articulated

at all levels, such entrenched stereotypes will continually threaten to depoliticize and marginalize our specific political and social aspirations and will continue to have very real and negative consequences for the Arabic community, most notably in the form of racism".

98. Members of the Arab community have reported to the Council that they have been victims of physical assaults, attacks on their private property and verbal racist insults, and have received racist messages by ordinary mail or by e-mail. Attacks on mosques have also been reported. Such incidents increased during the Gulf war and are again increasing with the exacerbation of the conflict in the Middle East. "Dirty Arab", "Arabs deserve to die" and "Go home, Arab; we don't want you here" are frequently heard remarks. Many incidents occur in schools and on campuses, where Arab schoolchildren and students are abused by teachers or fellow students having anti-Arab views. Veiled women or women wearing the "hijab" are often verbally abused. Such incidents are not always reported to the police or to the race discrimination commissions because the victims feel excluded from Australian society and do not expect to win their case.

99. Discrimination in employment against Muslims in general and against Arab Muslims in particular is frequent. Thus there have been cases where employers have asked Arab job-seekers to change their name if they wanted to be recruited. One Australian of Palestinian origin, an aeroplane mechanic who was born in Australia and applied for a job with an airline, had to undergo a uniquely rigorous security check before he was hired.

3. Situations relating to immigration and asylum policy

100. Although the visit did not focus on immigration and asylum issues, some of the Special Rapporteur's interlocutors insisted on providing him with information on those issues which they think should be the subject of serious concern.

101. It has been reported that there is currently a campaign against refugees and immigrants which is orchestrated by the media and often backed by some members of the federal Government. With populist insinuations, migrants are being accused of creating unemployment and profiting from the system or invading Australia, etc. Increased discrimination in granting visas for Asian countries and for Muslims has been noted. The federal Government is increasingly opposed to family reunification, notably for persons admitted as refugees or migrants. This situation particularly affects Afghan refugees and migrants. Australia's immigration policy took a dramatic turn when, on 3 April 2001, Mr. Shahraz Kayani, an immigrant of Pakistani origin, was driven to despair and burnt himself to death in front of the federal Parliament building in Canberra. After having been granted refugee status in 1995, Mr. Kayani became an Australian citizen in 1999 and submitted several applications for his wife and disabled daughter to join him. In 1997 and 1999, the Department of Immigration refused to grant his family members entry visas on the ground that his sick daughter would be a financial burden on Australian social security.

102. At the professional level, migrants - especially those coming from non-English-speaking countries - also have to deal with the non-recognition of their qualifications and experience. They often have to study again and pass new examinations in Australia in order to be able to

work at the appropriate level of expertise. Many migrants therefore have to work for many years in jobs inferior to their real qualifications and have to bear the financial consequences. In some professions (medicine, teaching, engineering) the barriers migrants have to face are so great that they often have to give up the profession altogether.

103. The Special Rapporteur was informed that there are over 3,000 people, including women and children, being held in DIMA detention centres. A disproportionate number of these people are adherents of the Muslim religion, mostly from the Middle East and Asia. Others are from the Pacific Islands and Africa. Some have been kept there for several years, during which time they have been prevented from communicating with the outside world. It has been alleged that punitive, cruel and degrading treatments, often in the guise of "psychiatric care", are routine in these detention centres. Injections with chemical substances to restrain, followed by solitary confinement, are routinely used as punishments. The drugs used usually belong to the phenothiazine and butyrophenone classes of drug, which block the neurotransmitter dopamine (in the brain), causing difficulty with movement, dulled emotions, impaired concentration and memory, and Parkinsonism (tremors, stiffness). The DIMA detention centres, located at Port Hedland (Western Australia), Villawood (Sydney), Perth (Western Australia), Curtin (Western Australia), Woomera (South Australia) and Maribyrnong (Melbourne), are staffed by the United States (Florida)-based Wackenhut Corrections Corporation (WCC). WCC also provides health care to detainees and these treatments reportedly are racially discriminatory, punitive and harmful to the physical and mental health of recipients.

104. The Special Rapporteur inquired about the above allegations with several interlocutors, including the Human Rights and Equal Opportunity Commission and the Federation of Ethnic Communities' Councils of Australia, which denied them. The Human Rights and Equal Opportunity Commission stated that "there are no objective sources which can prove these allegations. Allegations about the use of sedative injections to restrain detainees - i.e. when not indicated/required for medical reasons - were made during the early to mid-1990s and referred to in the Human Rights Commissioner's 1998 report 'Those who've come across the seas'. Recommendation 10.15 of that report was 'The Department (meaning DIMA) should seek legal advice on the lawfulness of chemically restraining detainees'. Recommendation 10.16 proposed that, provided such use was lawful, 'the Department should only chemically restrain a detainee in an emergency situation where it is required to save the person's life or to prevent him or her from causing serious harm to himself or herself or others'".

105. In response to those recommendations, the Minister for Immigration stated, in the "Government response" tabled in Parliament in mid-1999, "DIMA does not chemically restrain detainees. Under no circumstances are these medications used for punishment or to control detainees". That position has been maintained since. Certainly the Immigration Detention Standards binding Australian Correctional Management - the private detention service-providers now operating the Australian immigration detention centres - make these stipulations.

106. The Special Rapporteur would call upon the Special Rapporteur on the human rights of migrants to look further into immigration issues in Australia and intends to share relevant information with her.

4. Significant cases of racism, racial discrimination and xenophobia

107. The Human Rights and Equal Opportunity Commission states in its report for 1999-2000 that during the period 1998-1999 it received 467 complaints of racial discrimination under the Racial Discrimination Act 1975. In 2000, it received only 299 complaints, a decrease of 62 per cent. But the Commission states that "the overall number of complaints received in the year 2000 is, however, not dissimilar to previous years". It explains that "employment-related complaints represented the largest area of complaint under the Act (34 per cent), followed equally by racial hatred (19 per cent) and the provision of goods and services (19 per cent) complaints". It should be further noted that the majority of complainants are of non-English-speaking background, Aboriginals or Torres Strait Islanders.

Table 6

Complaints of racial discrimination received, by area

Section of the Racial Discrimination Act	No. complaints
Right to equality before the law	15
Access to places and facilities	11
Land, housing, other accommodation	13
Provision of goods and services	74
Right to join trade unions	-
Employment	143
Advertisements	1
Education	5
Incitement to unlawful acts	4
Other sections	45
Racial hatred	75
Total*	386

* One complaint may concern multiple areas.

Table 7

Complaints received, by ethnicity of complainant

Background	No. complainants
Non-English-speaking background	164
Aboriginal and Torres Strait Islander	63
English-speaking background	57
Unknown	15
Total	299

108. One of the cases which the Commission helped resolve particularly attracted the attention of the Special Rapporteur; it concerned the complaint submitted by the Foundation for Aboriginal and Islander Research Action (FAIRA) against the State of Queensland, which is reproduced below:

> "Case Summary of Race Discrimination complaint in Employment:
>
> "(a) The complaint:
>
> "The Foundation for Aboriginal and Islander Research Action ('FAIRA') lodged a complaint on behalf of 467 former Aboriginal Palm Islands residents against the State of Queensland.
>
> "FAIRA claims that these Aboriginal residents were discriminated against on the basis of their race by the State of Queensland between 31 October 1975 (the commencement of the Act) until 1984 as they were paid wages at a lower rate than non-Indigenous people for the same work. FAIRA has submitted that the type of work performed by the complainants on Palm Island during the relevant period included domestic cleaning in homes and school dormitories, labouring, working in market gardens and community farms, working in the power house, hospital and school, etc.
>
> "(b) Submission from the Queensland government:
>
> "The Queensland State Cabinet approved a proposal from FAIRA to establish an administrative process to deal with the complaints received by the Commission and for any other complaints of similar circumstances (statewide) which they estimate to be around 3,500 other Indigenous persons.
>
> "The Government had agreed to pay any person who can establish they worked for the Department in the relevant time period with a $7,000 payment, which is the same figure awarded in decision of *Bligh & Ors of Queensland*. Details of eligibility for the compensation were negotiated between FAIRA and State government in that the claimants would be entitled to the payment if they had worked for the Department for 24 weeks (not necessarily continuously) between 31/10/75 and 1/04/80 or 48 weeks thereafter. The distinction was drawn because a guaranteed minimum wage was paid to all departmental workers after 1/04/80. The administrative process will also involve a free dispute resolution."

109. This case should be linked to another situation which was described to the Special Rapporteur and, while being close to that described above in connection with that of the "stolen generations", is not similar in every respect:

> "Between 1897 and 1975, the majority of Aboriginal and Torres Strait Islander workers had their wages controlled by the Queensland government in accordance with the 'Protection Acts'.

"The scheme was quite complex and changed many times over the period. Wages were split into three components:

- Compulsory savings;
- Statutory deductions; and
- Pocket money.

"Compulsory savings were placed in the Queensland Aborigines Account. Any spending of these monies could not be made without the consent of the Local Protector or Superintendent.

"Statutory deductions were made on wages in varying amounts depending on a person's situation. The monies collected by way of deduction went to the Aboriginal Welfare Fund Account and were used for spending which was said to be for the 'benefit of Aboriginal people generally'. When the Fund was frozen in 1993 it was credited with $A 7.6 million.

"Some employers had to pay parts of people's wages directly to them as 'pocket money'; however, the majority of workers claim never to have received this portion of the wage."

110. The Queensland Aboriginal and Torres Strait Islander Legal Services Secretariat (QAILSS) is endeavouring to seek compensation from the Queensland government for persons who worked under the Protection Acts.

111. The Special Rapporteur was himself told about two cases of discrimination in employment which are currently being considered by the competent Australian authorities. In deference to the principle that domestic remedies must be exhausted before a case of violation of human rights can be considered, the Special Rapporteur awaits the conclusion of the ongoing proceedings.

112. A further concern expressed by a number of interlocutors related to the increase in racist insults in football stadiums, both from spectators and from opponents. These insults have been directed mainly at Aboriginal players, who have been playing for clubs in greater numbers since 1980. In the year 2000, there were 46 registered Aboriginal players in the Australian Football League. The league authorities have reacted to racial insults at grounds, in particular when in 1995 Michael Long, an Essendon player, lodged a complaint with the league for racial insults. He demanded that the league adopt rules which would allow players uttering racial insults to be fined or suspended. In June 1995, the league adopted "rule 30", which is aimed at combating racist and religious defamation. It reads: "No player ... shall act towards or speak to another person in a manner, or engage in any other conduct, which threatens, disparages, vilifies or insults another person ... on the basis of that person's race, religion, colour, descent or national or ethnic origin". The league has also organized anti-racism awareness campaigns aimed at players. Although it has succeeded in changing relations between players on the pitch, the league has not yet put a stop to racist behaviour by spectators; insults of the "you black bastard", "coon" and "nigger boy" type are often heard on the terraces.

113. Statistics relating to complaints dealt with by the human rights institutions in the various states and territories in 1999 and 2000 for various types of discrimination (sex, race, handicap) were also brought to the attention of the Special Rapporteur. Complaints relating to racial discrimination generally account for the largest proportion.

Table 8

State and Territorial Equal Opportunity/Anti-Discrimination Commission complaints statistics, 1999/2000

States and territories	Number of complaints of racial discrimination	Percentage of total complaints received
New South Wales	259	19
Queensland	172	13
Victoria	482	12
South Australia	35	18
Western Australia	91	21.6
Tasmania	9	4.7
Northern Territory	96	26
Australian Capital Territory		10
Total	1 066	

114. In the State of Victoria, the complaints received were made under that State's equal opportunity law enacted in 1995 and mainly related to discrimination in employment (77 per cent). The government of Victoria plans to strengthen its legislation against racial discrimination by adopting "a racial and religious vilification act which will make unlawful any verbal or physical conduct which communicates serious racial and religious intolerance. Vilification includes communications which speak ill of, malign, abuse or make derogatory comments about other people, groups or communities in terms of their racial or religious affiliations. It can include intimidation or damage to property, graffiti, expressions of hatred or contempt".

III. ACTIVITIES OF CIVIL SOCIETY

115. In Australia, associations are very numerous and diversified, indeed as diversified as Australian society itself. A distinction may be drawn between ethnic organizations or associations which conform to the Australian social pattern while preserving a cultural area of their own, organizations offering a service, in particular those which encourage the integration of the various immigrant communities and contribute to the preservation of social harmony, and organizations for the promotion and protection of human rights. The Commonwealth Government and local governments provide material support for these organizations when their activities contribute to the strengthening of the Australian ideal, notably by promoting multiculturalism and democracy. The Special Rapporteur met representatives of associations belonging to each of these categories and learned a great deal about Australian society from them.

A. Activities undertaken by Aboriginal organizations

116. These are community organizations generally based on different clans or emerging from a group of persons of Aboriginal origin. Their chief function is to ensure the economic and social development of these clans and groups and to protect their interests.

117. In the State of Queensland, the Special Rapporteur visited the Yarrabah community: situated about 37 km from Cairns, it is composed of 3,400 people. Originally, it was a community set up by an Anglican missionary to save the Aboriginals from extermination. In 1986, it established a council with responsibility for development and management and with a membership of seven; only the chairman is remunerated by the State of Queensland. The community receives from the Aboriginal and Torres Strait Islander Commission (ATSIC) an annual grant of $A 18 million, which is used primarily for the construction of infrastructure, including a 10-bed clinic and housing, and the remuneration of service-providers. The council has also developed a project for the training of five Aboriginal police officers, who liaise with the State of Queensland police; it is also supporting the training of a young Aboriginal manager, who will be involved in project execution.

118. In Alice Springs in the Northern Territory, the Special Rapporteur visited the Tangentyere council, a body responsible for promoting the interests of the Arrente people, who own the region around Alice Springs. The council has been in existence since 1979 and is endeavouring to provide modern housing for some 1,200 people. It also engages in social activities, notably night patrols to prevent anti-social behaviour by certain Aboriginals. This is one of the projects under the Community Development Programme (CDEP), which provides a partial solution to the problem of Aboriginal unemployment. The council has succeeded in banning the sale of alcohol in the areas inhabited by Aboriginals. It collaborates with the municipality of Alice Springs, notably for the purpose of finding jobs for Aboriginals, most of whom work on road maintenance. Another community organization which provides support for Arrentes living in the Alice Springs region is the Arrente council: it assists families in obtaining grants from the government of the Northern Territory; it provides transport between the town and the rural areas where the communities live. It has set up a public works department which carries out contracts for scrub-clearance along roads, maintenance of footpaths, maintenance of urban pavements and parks, and the cutting and sale of wood for heating purposes. These activities also come under the CDEP.

119. Also in Alice Springs, the Central Australian Aboriginal Congress has for 25 years been engaged in the improvement of Aboriginal health: in its clinic, 10 doctors, a nurse and 9 auxiliary staff provide general and specialized medical care (dentistry, orthopaedics, ophthalmology, ear, nose and throat care for children). The Central Australian Aboriginal Legal Service provides assistance for Aboriginals taking legal action; it was set up to deal with the problem of the large numbers of Aboriginals in Australian prisons and to enable them to be better represented in a judicial system which is different from their own traditional system and uses English, which most of the accused do not understand. This service intervenes in civil and criminal cases, providing interpretation services and lawyers.

120. In the field of education, the Special Rapporteur learned about the activities of the Alice Springs Aboriginal Development Institute, which was established in 1969 and now has the status of a university institute attached to Lutro University in the State of Victoria. The Institute devotes itself to the high-level training of Aboriginals, giving due weight to the requirements of Aboriginal culture and non-Aboriginal values (the training schedule takes account of traditional ceremonies in which students are required to participate). It trains teachers, educators, publishers, social assistants, managers, entrepreneurs and interpreters. Some of the Institute's courses are aimed at the personality development of Aboriginals and focus on persons suffering the effects of racial discrimination; other courses, such as the Aboriginal leadership programme, are aimed at providing political training, teaching Aboriginals to negotiate, supporting their communities and designing development projects. In the year 2000, the Institute trained 600 students. Despite its achievements, the Institute's leaders consider that it does not receive sufficient financial support from the Northern Territory government because of its desire for autonomy and its pro-Aboriginal approach. Thus credits have still not been granted by the government for the extension and modernization of the Institute, a project which was submitted in 1994 and approved by the federal Department of Education, Training and Youth Affairs. This project will enable the Institute to become an Aboriginal university with several departments.

121. Organizations such as the Stolen Generation Consultation Project provide legal and psychological support for victims of the child abduction policy practised by the Commonwealth Government up to 1970. The Special Rapporteur attended a meeting of this organization in Alice Springs on 2 May and heard particularly moving testimony by a number of people in their seventies who were searching for their origins.

B. Ethnic and inter-ethnic organizations, and organizations working in support of migrants and contributing to social harmony

122. The Cabramatta Community Centre in Fairfield, the Federation of Ethnic Communities' Councils of Australia, Anglicare, the B'nai B'rith Anti-Defamation Commission and the Australian Arabic Council are just a few of the organizations in these categories which help to give life to Australian multiculturalism and to preserve social harmony.

123. The Cabramatta Community Centre, situated in the city of Fairfield - an ethnically diverse suburb to the west of Sydney, forms part of a support network for migrants and refugees and provides assistance in the following fields: learning English, housing, child care, health care, legal and social counselling, support for older persons, assistance with settlement, job-seeking and youth activities. Of the city's 181,785 inhabitants, over 50 per cent come from 130 different countries, speak over 70 languages and practise 60 religions. It is a large community-based organization with different divisions that are managed by sub-committees made up of members of the local community. It includes a neighbourhood centre, a migrant resource centre and a youth team. The first Indo-Chinese refugees started to arrive in the Fairfield area in 1975. Many arrived in the country having suffered severe trauma from war, torture, starvation, family loss and separation, and speaking little or no English. The Centre's activities started when an immigrant from Germany started teaching English to refugees in her home and developed into the Community Centre in 1981.

124. In view of its success, the Centre receives subsidies from the Department of Immigration and Multicultural Affairs, mainly for the teaching of English. The English courses for migrants form part of the Department's Adult Migrant English Programme, each new immigrant receiving a grant for 510 hours of study of English. However, senior Centre staff consider that this length of time, which has been reduced following budgetary restrictions on programmes for migrants, is insufficient to enable a non-English-speaker to gain a sound command of the language and enable him to become integrated in society.

125. In cooperation with the Fairfield authorities and various associations, the Centre organizes cultural events to celebrate Harmony Day on 21 March, which corresponds to the International Day for the Elimination of Racial Discrimination adopted by the United Nations, and also the celebrations of the various communities (Chinese, Khmer and Lao New Year, Latin American community festivals, German beer festival, etc.). Other activities form bridges between the various communities and thus help them to avoid living in a closed environment, for example, through the exchange of t'ai chi and flamenco lessons between immigrants of Chinese and Spanish origin. These activities provide an opportunity for making the most of ethnic diversity and highlighting its positive aspects.

126. The Federation of Ethnic Communities' Councils of Australia was established in 1979 as an umbrella organization for the ethnic bodies set up in the various states and territories. The Federation regards itself as the spokesperson for non-English-speaking Australians in order to ensure that they genuinely participate in multiculturalism. It seeks to represent the interests and concerns of ethnic Australians through: the formulation of relevant policies; representation to government; participation in public debates; consultation with industry, the professions and community organizations; organization of seminars and conferences; and community education. It monitors a wide range of issues, including social welfare, employment, language policy and immigration.

127. The Australian Arabic Council, in addition to its activities to combat racism and racial discrimination, endeavours through various cultural and information activities to promote a better knowledge and appreciation of the Arab community. Every year, the Council organizes Arabic Cultural Day, which presents Arab culture from several angles (art, literature, religion, contribution to the progress of mankind, etc.). Every year, the Council awards a prize to a journalist who has shown objectivity in his or her coverage of events relating to the Arab-Australian community. The Council also engages in several training activities for members of the community, notably by organizing seminars on relations with the press, lectures and debates. It has also undertaken to change the stereotyped view of Arabs propagated by schools by initiating a pilot project in conjunction with the history teachers' association in the State of Victoria; thanks to this project medieval history has been re-evaluated, showing that Europe's dark ages coincided with the golden age of the Arab world.

128. The contribution of the Jewish organization, the B'nai B'rith Anti-Defamation Commission, to inter-communal harmony has been reflected in several projects, including a mobile exhibition on intolerance entitled "Courage to Care". The aim of this exhibition is to educate young Australians, and the general public, about racism in particular and prejudice in

general. It aims to demonstrate that everyone can make a difference. The exhibition honours the "Righteous among the Nations", non-Jews who saved Jews during the Holocaust at the risk of their own lives. The organization has also designed a project aimed at managing cultural diversity in the workplace; the project seeks to evaluate the policies and practices of Australian companies through the analysis of patterns such as their dedication in productive diversity for the company's commercial gains; the reduction of prejudice and discrimination and the promotion of harmony in the workplace; the enhancement of respect for people of diverse cultures; and the provision of conditions which contribute to the material and spiritual well-being of workers.

C. Religious organizations

129. Several religious organizations also participate in efforts to combat racial discrimination and to preserve social harmony. Several conferences on religion and diversity have been organized under the aegis of the Australian Multicultural Foundation and in cooperation with the various faith organizations in Australia (Christian, Muslim, Jewish, Buddhist) in order to bring them closer together. The first one, held in 1997 in Melbourne in the context of the World Conference on Religion and Peace Australia, was designed to provide "an opportunity to listen and learn from each other's experiences, and to address the issues of social cohesion, tolerance and policy-making in religiously diverse societies". The conference made some major recommendations, including the promotion of inter-faith dialogue and understanding and the establishment of a legal and constitutional framework that promotes respect for religious difference.

130. The second one, the Religion and Cultural Diversity Conference, was held in October 1999, in London in cooperation with the European Multicultural Foundation and its outcome contained some landmarks for the consolidation of Australian religious diversity. It was organized as a forum where discussion could be generated in a bid to promote global peace and harmony. It was agreed that a country rich in cultural and religious diversity was wealthy, despite its economic or political position. Participants also agreed on the paramount role of Governments in fostering qualities such as acceptance, respect and equality.

131. Among the organizations active in the field, mention may be made of the National Council of Churches, a Protestant organization which devotes itself, inter alia, to the rehabilitation of Aboriginals and the protection of refugees. The Protestant churches have recognized their responsibility in the destruction of Aboriginal societies and are now helping to ensure the autonomy of these peoples, notably by encouraging the emergence of an Aboriginal clergy. One officer of the National Council of Churches states that membership of the Christian faith no longer presupposes the acculturation of the Aboriginals, Aboriginal culture being respected and integrated in Christian religious practice. The Anglicare organization is a charitable institution of the Anglican Church which provides various services to immigrants, including English teaching, assistance in finding jobs and housing, social assistance, migrant counselling, support for women and supervision of young people subjected to mandatory sentencing.

IV. CONCLUSIONS AND RECOMMENDATIONS

132. The Special Rapporteur notes that substantial efforts are being made by the Australian Government to end racism and racial discrimination. The programmes aimed at improving the living conditions of the Indigenous peoples ist, even if they have not yet succeeded in producing the desired results. Recognition of ethnic diversity and the promotion of inter-ethnic harmony undoubtedly constitute an ideal policy for consolidating the Australian nation, provided it does not waver under the influence of electoral considerations. In addition, the question of reconciliation with the Aboriginal peoples remains outstanding, because it affects the foundations of the Australian State and conflicting cultural values.

133. For the Aboriginals, despite the democratic foundations of the Australian State and its desire to incorporate all its ethnic components on an egalitarian basis, this State is a manifestation of colonization whose consequences remain to this day, notably through the limitation of their land rights, the tragedy of the abducted children, cultural clashes and highly precarious living conditions outside the wealth of the majority of Australians. In their view, the resolution of conflicts is dependent on negotiation on equal terms between Australia's governors and those who originally possessed the continent, the eminent owners of the Australian lands, of which they have been dispossessed, particular account being taken of their indissoluble links with the land. The land question remains crucial and is the key to the Australian problem. The Commonwealth Government and the dominant political forces mainly take a forward-looking approach which, while envisaging the possibilities of remedying the consequences of past actions, wishes to reduce their effects on the building of a new nation. There is undoubtedly a medium-term character in the positions displayed by the various protagonists, and the Australian people has on many occasion succeeded in finding the catalysts for dialogue in order to restore confidence and ensure peaceful coexistence.

134. Note should be taken of Ms. Mary Kalantzis' observations that "diversity is now the basis of [Australian] civic life. Australia has its own unique history of diversity: an immigration programme that has made this perhaps the most diverse nation in the world, and the centrality of the task of completing the settlers' unfinished business with the Indigenous people of this nation. Yet [it] also shares with the rest of the world a shift in global political orientations. Since the end of the cold war particularly, the politics of culture, identity and nation - the politics of diversity, in other words - has taken centre stage. No nation in the world can govern unless it is able to articulate the way in which resources and well-being are guaranteed to different groups, including historically-marginalized groups".[19]

135. The following recommendations are therefore prompted by a desire to pave the way for a coming-together of the various protagonists:

(1) The policy of multiculturalism should be widely discussed and defined by a broad consensus. In order to reduce if not eliminate the superiority and inferiority complexes which underlie relations between the Aboriginals and the mainly English-speaking heirs of European culture, the policy should be based on recognition of the right to difference and to cultural identity, with broad communication between one culture and another. Inspiration should be

drawn from UNESCO's declarations and programmes on cultural identity, cultural diversity and multiculturalism; thus, through education, there will be a breakthrough in the present situation, which is represented by a so-called multiculturalism policy when in fact the various communities and peoples lead parallel lives while continuing to ignore one another. The Special Rapporteur therefore recommends that the Australian Government should review its policy of multiculturalism, in order to turn it into a channel for the dynamic and harmonious transformation of national society, through education at all levels;

(2) The process of reconciliation should be given fresh impetus, taking greater account of the positions of the representatives of the Indigenous peoples;

(3) The Native Title Act should be amended in the light of the proposals already made by the Aboriginals in order to enable them to extricate themselves from the extreme poverty afflicting them in their daily lives;

(4) Since sport, and Australian football in particular, are activities which bring the various components of the Australian population together, and are a potential vehicle for tolerance and respect between individuals, the Special Rapporteur recommends that the Australian Football Association should initiate a broad campaign against racism and racial discrimination aimed at spectators. This campaign might be modelled on the "Let's kick racism out of football" campaign initiated in the United Kingdom in 1993 by the Commission for Racial Equality and the Professional Footballers' Association;

(5) Subsidies should be made available to the Alice Springs Aboriginal Development Institute so that the university can be built;

(6) The state and territory legislation on the recognition of qualifications should be uniform, and diplomas issued by more overseas universities should be recognized;

(7) The Australian Government should accede to the Convention on the Elimination of All Forms of Discrimination against Women;

(8) The government of the State of Queensland should accelerate compensation procedures for Aboriginals and Torres Strait Islanders whose wages have been withheld since 1897, through the implementation of the measures for the protection of these peoples;

(9) The Australian Government is urgently requested to find a humane solution to the question of the "stolen generation", whose situation is psychologically and socially blocked and desperate;

(10) Lastly, the Special Rapporteur would like to recommend to the Australian authorities that they continue, improve and intensify the efforts already being made to combat racism and racial discrimination against the Aboriginal peoples, in particular by attacking their extreme poverty.

Appendix

PERSONS MET DURING THE MISSION

(22 April-10 May 2001)

Sydney

(23-25 April 2001)

Hon. Philip Ruddock MP, Minister for Immigration and Multicultural Affairs, Reconciliation and Aboriginal and Torres Strait Islander Affairs

Mr. Con Pagonis, Ms. Elektra Spathopoulos, Ms. Gina Andrews, DIMA

Mr. Peter Rock, National Manager, Centrelink Multicultural Services (Marrickville)

Mr. Bill Jonas, Race Discrimination and Aboriginal and Torres Straits Islander Social Justice Commissioner

Mr. Sev Ozdowski, Human Rights Commissioner, Human Rights and Equal Opportunities Commission (HREOC)

Mr. Darren Dick, Director, Social Justice Unit, HREOC

Ms. Margaret Donaldson, Director, Complaint Handling Section, HREOC

Mr. Juan Carlos Brandt, Director, United Nations Information Centre, Sydney

Ms. Margaret Reynolds, National President, United Nations Association of Australia

Mr. Aden Ridgeway, Senator for New South Wales

Ms. Linda Burney, Director-General, New South Wales Department of Aboriginal Affairs

Mr. Nigel Milan, Managing Director, Special Broadcasting Service (SBS)

Ms. Mary Dimech, Association of Non-English-Speaking-Background Women

Ms. Paula Aboo, Arab Australian Action Network

Ms. Samila Hatami and Ms. Rukhsha Sarway, The Afghan Women's Network

Ms. Mahboba Cina, Afghan Women Group

Ms. Judy Lumsden, Manager, Australian Centre for Languages

Ms. Carole Skafte-Zauss, Marketing and Settlement Relations Manager, Australian Centre for Language

Mr. Ricci Bartels, Coordinator, Fairfield Migrant Resource Centre

Ms. Bamathy Somasejawam, Fairfield Migrant Resource Centre

Mr. Lachlan Murdock, Service for the Treatment and Rehabilitation of Torture Survivors

Ms. Xuyen Tang, Manager, Anglicare Migrant Service

Prof. Maurice Eisenbruch, University of New South Wales Medical Faculty

Dr. Mitchell Smith, New South Wales Refugee Health Services

Mr. Jorge Oroche, Service for the Treatment and Rehabilitation of Torture and Trauma Sufferers

Mr. Bill Cope, Director, Centre for Workplace, Communication and Culture

Mr. Andrew Jakubowicz, Faculty of Humanities and Social Sciences, University of Technology, Sydney

Mr. Jock Collins, School of Finance and Economics, University of Technology

Thursday Island

(26-27 April 2001)

Mr. Terry Waia, Chairperson, Torres Strait Regional Authority

Mr. Henry Garnier, Chairman, Island Coordinating Council

Mr. Pedro Stephens, Mayor, Thursday Island

Dr. Philip Mills, Director, Thursday Island Hospital

Ms. Dorothea Philip, Lena Passi Women's Shelter

Cairns

(28-29 April 2001)

Ms. Evelyn Scott, Former Chairperson, Council for Aboriginal Reconciliation

Mr. Tony Battaglini, DIMA Cairns

Mr. Terry O'Shane, Regional Chairperson, Aboriginal and Torres Strait Islander Commission (ATSIC)

Mr. Italo Iriolo, Migrant Settlement Services

Ms. Ruth Venables, Regional Director, Anti-Discrimination Commission Queensland

Mr. Van Yee Chang, Hmong Community Representative

Ms. Deevah Melendez, Local Area Multicultural Partnership (LAMP), Cairns City Council

Ms. Judy Tierney, St. Vincent de Paul

Mr. Leon Yeatman, President, Yarrabah Community Council

Ms. Helen Biro, Centrecare

Mr. Kevin Kearney, Catholic Education

Mr. Peter Opio-Otim, Executive Director, and Mr. Edward Wymarra, Manager, Aboriginal Coordinating Council

Mr. Don Freeman, Managing Director, Tjapukai Aboriginal Cultural Park

Darwin

(29-30 April 2001)

Hon. Mike Reed, Deputy Chief Minister, Northern Territory

Superintendent Mick Van Heythuysen, Member, Council for Multicultural Australia

Mr. Tony Tucker, Director, DIMA, Northern Territory

Mr. Tony Jack, Chairperson, Indigenous Housing Authority of the Northern Territory and Mr. Garrack-Jarru, Chairperson, Aboriginal and Torres Strait Islander Commission (ATSIC) Regional Council

Mr. Tom Stodulka, Anti-Discrimination Commissioner

Mr. Norman Fry, Chief Executive Officer, Northern Land Council

Mr. Galarrwuy Yunupingu, Chairman, Northern Land Council

Mr. Michael Odur Ochieng, Ms. Mogga Dickens and Mr. Michael Rasas Eludas, representatives of the Sudanese Community

Alice Springs

(1-2 May 2001)

Ms. Fran Erlich, Mayor, Alice Springs Town Council

Mr. Daniel Forrester, Chairperson, Tangentyere Council (Aboriginal Business Enterprise)

Ms. Stephanie Bell, Acting Director, Central Australian Aboriginal Congress (Aboriginal Medical Service)

Ms. Patricia Miller, Director, Central Australian Aboriginal Legal Service

Ms. Eileen Shaw, Director, Arrente Council

Mr. David Hayes, Director, Institute for Aboriginal Development

Mr. David Ross, Director, Central Land Council, Alice Springs

Melbourne

(3-7 May 2001)

Senator Kay Patterson, Parliamentary Secretary to Minister Ruddock on Immigration and Multicultural Affairs and Parliamentary Secretary to Minister Downer on Foreign Affairs

Ms. Diane Sisely, Chief Executive, Equal Opportunities Commission Victoria

Mr. Neville Roach, Chairman, Council for Multicultural Australia

Mr. Hass Dellal, Executive Director, Australian Multicultural Foundation

Ms. Mary Kalantzis, Dean, Faculty of Education, Language and Community Services, Royal Melbourne Institute of Technology (RMIT)

Mr. Bill Cope, RMIT

Ms. Virginia Ross, Chairperson, Equal Opportunity Commission

Representatives of the Horn of Africa Women's Group

Mr. Roland Jabbour, Chairman, Ms. Halla Marbani, Mr. Taimor Hazou, Mr. Joseph Wakim, Mr. Alexander Kouttab, Ms. Vicki Mau, members, Australian Arabic Council

Ms. Lillian Holt, Professor, University of Melbourne

Mr. Ivan Kolarik, Executive Director, National Police Ethnic Advisory

Mr. Danny Ben-Moshe, Executive Director, B'nai B'rith Australia and New Zealand, Anti-Defamation Commission and representative of the Australian Council of Jewry
Ms. Nina Bassat, President, Executive Council of Australian Jewry

Mr. Paris Aristofle, Director, Victoria Foundation for Survivors of Torture Inc., member of the Immigration Detention Advisory Group

Mr. Daryl Williams, Attorney-General

Canberra

(8-10 May 2001)

Mr. Daryl Williams, Attorney-General

Ms. Karry Leigh, Ms. Philippa Horner, Ms. Sandra Power, Mr. Stephen Fox, Ms. Robyn Frost, Ms. Sue Sheppard, Ms. Dianne Heriot, Attorney-General's Office

Mr. Peter Vaughan, Executive Coordinator, Mr. Bill Farmer, Secretary, Mr. John van Beurden, Assistant Secretary, Department of Reconciliation and Aboriginal and Torres Strait Islander Affairs

Mr. Peter Hughes, First Assistant Secretary, Mr. Vince Guica, Mr. Abul Rizvi, Ms. Philippa Godwin, Mr. Thu Nguyen-Hoan, Assistant Secretaries, DIMA

Justice Michael Kirby, Australian High Court

Ms. Alice Tay, President, HREOC

Mr. Joseph Elu, Chairman, Aboriginal and Torres Straits Commercial Development Corporation

Mr. Michael Curtotti, Mr. Andre Frankovits, Mr. Chris Sidot, Ms. Mary Ziesak, NGO Working Group for the World Conference on Racism

Mr. Nick Xynias, Chairperson, Federation of Ethnic Communities' Council of Australia (FECCA)

Mr. Mick Dodson, Chair, Australian Institute of Aboriginal and Torres Strait Islander Studies, Ms. Marcia Langton, Deputy Chair

Senior officials from the Department of Prime Minister and Cabinet (Office of the Status of Women, Social Policy Branch, International Division); Attorney-General's Department, Department of Reconciliation and Aboriginal and Torres Strait Islander Affairs

Meeting with senior executives of DIMA

Ms. Trish Keller, Principal, Narrabundah Primary School

Ms. Vivienne Blundell, Principal, Hughes Primary School

Notes

[1] Albanian, Amharic, Arabic, Bosnian, Chinese, Croatian, Czech, Dutch, English, Farsi, French, German, Greek, Hindi, Hungarian, Indonesian, Italian, Khmer, Korean, Lao, Macedonian, Malay, Maltese, Polish, Portuguese, Pukapuka, Pushto, Romanian, Russian, Samoan, Serbian, Sinhalese, Somali, Spanish, Tagalog, Tamil, Thai, Tigrinya, Tongan, Turkish, Ukrainian, Vietnamese.

[2] M. Neutze, W. Sanders, and G. Jones, Public expenditure on service for Indigenous people - education, employment, health and housing, Discussion Paper 24, The Australian Institute, Canberra 1999.

[3] Ibid., p. xiii.

[4] Communication by the Race Discrimination and Aboriginal and Torres Strait Islander Social Justice Commissioner.

[5] For a fuller understanding of the Native Title Act see CERD/C/4/Add.2, CERD/C/SR.1324, CERD/C/SR/1393 and CERD/C/304/Add.101.

[6] Ward and Others (on behalf of the Miriuwung and Gajerrong People) v. State of Western Australia and Others 159 ALR 483 ("Miriuwung Gagerrong").

[7] Ward v. Western Australia (Miriuwung Gajerrong), 3 March 2000 [2000] FCA 191.

[8] NTA, section 1251D.

[9] Report of the Committee on the Elimination of Racial Discrimination (A/54/18, chap. II, sect. A), Decision (2) 54 on Australia, 18 March 1999.

[10] Sections 26A, 26B, 26C and 43A NTA allow for state governments to introduce legislation that diminishes or removes the operation of the right to negotiate. These provisions and the various state and territory governments' attempts to introduce such legislation are discussed in Aboriginal and Torres Strait Islander Social Justice Commissioner, *Native Title Report 1999*, pp. 61-67, and *Native Title Report 2000*, pp. 157-164.

[11] This included provisions relating to "high impact" exploration permits, mining claims and mining leases on "alternative provision areas"; and "high impact" exploration permits, "high impact" mineral development licences, mining claims and mining leases not on "alternative provision areas" under subsection 43 (1) NTA. "Alternative provision areas", defined at subsection 43A (2) NTA, include areas that are or were in the past covered by non-exclusive agricultural or pastoral leases, national parks, reserves, etc. In Queensland, the vast majority of land where native title may exist is covered by the "alternative provision area" definition.

[12] Pursuant to section 214 NTA the Attorney-General's determinations are disallowable instruments, meaning that the determinations are reviewable by the Senate. See *Native Title Report 2000*, p. 159.

[13] *Moving forward. Achieving reparations.* Issues Paper. A joint project of the Public Interest Advocacy Centre, National Sorry Day Committee and ATSIC.

[14] Ibid.

[15] "Our changing face", *ATSIC News*, September 2000.

[16] *Moving forward. Achieving reparations.* Op. cit., pp. 6-8.

[17] *ATSIC NT News*, September 2000, p. 1.

[18] "Our changing face", op. cit., p. 6.

[19] Mary Kalantzis; in *An Opportunity to Change the Culture: Multiculturalism, Immigration and Australian History in the Argument about Political Correctness*, Centre for Workplace Communication and Culture, Haymarket, New South Wales, p. 37, annex.

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COMMISSION ON HUMAN RIGHTS
Fifty-eighth session
Agenda item 6

RACISM, RACIAL DISCRIMINATION, XENOPHOBIA AND ALL FORMS OF DISCRIMINATION

Report by Mr. Maurice Glèlè-Ahanhanzo, Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, submitted pursuant to Commission on Human Rights resolution 2001/5

Addendum

Mission to Australia

Corrigendum

1. The following correction concerns the summary, which was issued in all languages:

Paragraph 7

The paragraph *should read* as follows:

Australia should accede to the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women.

2. The following corrections concern the annex, which was issued in English only:

Paragraph 23

Replace the second and third sentences by the following text:

It is an independent statutory authority established by the Commonwealth Government under the Aboriginal and Torres Strait Islander Commission Act 1989.

Paragraph 26

In the third sentence, *for* $A 327 million *read* $A 2.3 billion.

Delete the fourth sentence.

Paragraph 135 (7)

The paragraph *should read* as follows:

Australia should accede to the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women

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